

In The Matter Of:
Rhode Island Economic Development Corporation vs
Wells Fargo Securities, LLC

Donald Carcieri
July 31, 2014



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2 PROVIDENCE, SC. SUPERIOR COURT
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4 RHODE ISLAND ECONOMIC
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6 VS. C.A. NO. PB-12-5616
7
8 WELLS FARGO SECURITIES, LLC;
BARCLAYS CAPITAL, INC.; FIRST
9 SOUTHWEST COMPANY; STARR INDEMNITY
and LIABILITY COMPANY;
10 CURT SCHILLING; THOMAS ZACCAGNINO;
RICHARD WESTER; JENNIFER MACLEAN;
ROBERT I. STOLZMAN; ADLER POLLOCK &
11 SHEEHAN, P.C.; MOSES AFONSO RYAN, LTD.;
ANTONIO AFONSO, JR.; KEITH
12 STOKES; and J. MICHAEL SAUL
13
14
15
16
17 VIDEOTAPED DEPOSITION OF DONALD CARCIERI, a
Witness in the above entitled cause, taken on
18 behalf of the Defendants, before Linda L.
Guglielmo, RPR-RMR, a Notary Public in and for the
19 State of Rhode Island, at the offices of Duffy &
Sweeney, Ltd., 1800 Financial Plaza, Providence,
Rhode Island, on July 31, 2014, at 10:00 A.M.
20
21
22
23
24 ALSO PRESENT:
William White and Burke White, Videographers
25

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| <p style="text-align: right;">Page 5</p> <p>1 (COMMENCED AT 10:09 A.M.) 2 MR. WISTOW: Apparently, we've lost 3 track of where we are in the exhibit numbers, and 4 so we've agreed to just start at 801 and, 5 hopefully, try to figure this thing out. But 6 there is a known gap -- 7 MR. HOLT: Okay. And for the record, 8 references to exhibits during Mr. Carcieri's 9 deposition today will be beginning with number 10 801, and for the record, in this transcript, they 11 will be referred to as 801, which will mean 12 Carcieri deposition sequence of documents. Do we 13 agree to that, Max? 14 MR. WISTOW: I would, if I understood 15 what you said. 16 MR. HOLT: Let's say -- let's say the 17 sequence gets up -- we start having overlaps of 18 800 series documents with the examinations going 19 on today, unlikely, but it could be possible -- I 20 see Linda shaking her head no -- we don't know 21 where they ended up yesterday. My point is a 22 simple one, we'll begin with the sequence of 801 23 as the first exhibit. Essentially, we'll go 801 24 forward. And for the record, any deposition 25 exhibits marked in the Carcieri deposition that</p> | <p style="text-align: right;">Page 7</p> <p>1 Q. Now, I'd like to just perhaps go over some rules 2 of engagement, if you will, for today's 3 examination. If I ask you a question and you 4 don't understand the question, will you let me 5 know that you don't understand the question? 6 A. Uh-huh. 7 Q. And could you also give an audible answer, yes, 8 not uh-huh. 9 A. Yes. 10 Q. Now, if you do answer a question that I put to 11 you, I will assume that you understood the 12 question, and the answer you gave me was the one 13 that you intended to give; okay? 14 A. Yes. 15 Q. Now, also you understand that you are giving 16 testimony under oath as if you were in a court of 17 law with Judge Silverstein present and a jury 18 present; do you understand that? 19 A. I do. 20 Q. Have you ever had your deposition taken before? 21 A. Never. 22 Q. Have you ever given any testimony on the record to 23 any state or federal agencies or enforcement 24 authorities? 25 A. Oh, gosh, back in my Old Stone days, I might</p> |
| <p style="text-align: right;">Page 6</p> <p>1 begin with 8 and into the 9 series, the parties 2 agree will be those that are identified as having 3 been used in the Carcieri deposition; can we agree 4 to that, Max? 5 MR. WISTOW: I think so. I'm not 6 sure -- I'm just trying to be helpful. 7 MR. DeSISTO: I agree. 8 MR. HOLT: Thank you. 9 THE VIDEOGRAPHER: We're on the 10 record. 11 DONALD CARCIERI 12 Being duly sworn, deposes and testifies as follows: 13 THE REPORTER: State your name for 14 the record. 15 THE WITNESS: Donald Carcieri. 16 EXAMINATION BY MR. HOLT 17 Q. Governor Carcieri, my name is Tom Holt, and we 18 said hello a little earlier today, I represent 19 Wells Fargo in a litigation that's been filed by 20 the Rhode Island Economic Development Corporation 21 against my client, Wells Fargo, against First 22 Southwest, Barclays, and a number of other 23 defendants. Are you aware of that litigation, 24 sir? 25 A. Yes, I am.</p> | <p style="text-align: right;">Page 8</p> <p>1 have testified before the State Banking Regulator 2 because we had issues before them but, you know, 3 that's the only thing that comes to mind. 4 Q. Have you been contacted by the Securities and 5 Exchange Commission in connection with this 38 6 Studios matter? 7 A. No, I haven't. 8 Q. Now, you're aware, I take it, that the EDC 9 litigation arises out of a \$75 million loan 10 transaction that was approved while you were 11 serving as both Governor of the State of Rhode 12 Island and as the chairman of the EDC, right? 13 A. Yes. 14 Q. Now, before coming here today, could you tell us 15 what you did to prepare for your deposition 16 testimony? 17 A. Just a couple of meetings with Marc and Max 18 to go over the process and, you know, what would 19 likely be asked and refreshing, some documents 20 that were shown to me that -- from presentations 21 that had been made. 22 Q. All right. Let's start with -- from the 23 beginning. You said that you had a couple of 24 meetings with Max. You're referring to Max Wistow 25 who is sitting to your left?</p> |

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| <p style="text-align: right;">Page 9</p> <p>1 A. Yes. 2 Q. And he's the plaintiff's counsel in this case, 3 right? 4 A. Yes. 5 Q. And you referred to Marc, that's Marc DeSisto who 6 is sitting three down from your left? 7 A. Correct. 8 Q. And when did you have your first meeting with -- 9 A. Monday with -- 10 MR. HOLT: The other thing, can you 11 let me finish my question. 12 THE WITNESS: Okay. 13 Q. When did you have your first meeting with Mr. 14 Wistow? 15 A. Monday afternoon. 16 Q. That's -- 17 A. This past Monday. 18 Q. Is that the first time you ever had any 19 communications with Mr. Wistow? 20 A. No. Mr. Wistow called me before the suit was 21 commenced back when he was doing investigatory 22 work, which was, I guess -- I lose track now, it 23 had to be '12. I guess the summer -- the summer 24 of 2012. 25 Q. So in the summer of 2012 Mr. Wistow gave you a</p> | <p style="text-align: right;">Page 11</p> <p>1 A. I remember I was at it. I don't remember the 2 whole interview and what was said exactly. 3 Q. But it certainly related to the fact that 38 4 Studios went out of business, right -- 5 A. Yes. 6 Q. -- that interview? 7 A. Yes. 8 Q. And that interview also talked about your role in 9 connection with the decision to approve the 38 10 Studios deal, did it not? 11 A. I believe it did. I'd have to refresh, you 12 know, look at the tape but -- 13 Q. And do you recollect in that interview that you 14 took responsibility for the approval of the 38 15 Studios deal? 16 A. Well, I think what I said is I supported the 17 deal. I was, as Governor, you're an ex-officio 18 member of the board. I chaired the board, but I 19 was a supporter of the transaction, yes. 20 Q. Okay. And when was the last time you actually 21 looked at that tape? 22 A. I never looked at the tape. 23 Q. Okay. While we're on the topic of the fact that 24 you supported the 38 Studios deal, how did you go 25 about getting information relating to the 38</p> |
| <p style="text-align: right;">Page 10</p> <p>1 call -- he called you? 2 A. Yes. 3 Q. And was that the first time that you ever had any 4 discussions with Mr. Wistow in connection with the 5 38 Studios matter? 6 A. Yes. 7 Q. And -- 8 A. Could I add what he asked, would I meet with 9 him to discuss the 38 Studios matter, and I chose 10 to be represented by counsel and hired my own 11 counsel, Bob Flanders, from Hinckley, Allen to -- 12 who then met with Max, and that was the last 13 conversation I think I had had with Max. 14 Q. All right. So you have a very specific memory of 15 those events that you've just described back in 16 2012? 17 A. Yeah, pretty well. 18 Q. Incidentally, do you recall an interview on 19 September 16 of 2012 with Tim White on WPRI 20 concerning the 38 Studios matter? 21 A. Yes. 22 Q. Well, we have that video of that, and I have a 23 transcript of that, we'll come back to that later. 24 But you have a present memory of that -- of that 25 particular --</p> | <p style="text-align: right;">Page 12</p> <p>1 Studios deal that would be sufficient to allow you 2 as both Governor and ex-officio chair of the EDC 3 board to make an informed decision as to whether 4 to make the loan or not? 5 MR. WISTOW: Objection. 6 MR. HOLT: You may answer. 7 MR. WISTOW: Disregard my objections. 8 MR. HOLT: You may answer. 9 A. Through the board meetings, you know, I sat 10 as chair of the board, and when the 38 Studios 11 transaction was first brought up, and subsequently 12 that was where I participated with all the other 13 board members in those deliberations. 14 Q. So, is it your testimony under oath here today 15 that the only way that you received information 16 concerning the 38 Studios transaction was at board 17 meetings? 18 MR. DeSISTO: Objection. 19 Q. Is that your testimony? 20 A. Yeah. There might have been a phone call, 21 we're working with 38 Studios, and it's coming up. 22 But in terms of any substantive information 23 relating to the approval of the transaction, it 24 would have been in the process of the board 25 meetings, yes.</p> |

1 Q. So is it your testimony under oath here today that
2 you never received any information addressed
3 either to you or to, let's say, Mr. Hodgkin, your
4 chief of staff, concerning the 38 Studios
5 transaction, other than if it had been presented
6 at a board meeting; is that your testimony under
7 oath?

8 MR. DeSISTO: Objection. Answer. Go
9 ahead.

10 A. Yeah, you know, I don't remember every
11 communication and all of the paper that went --
12 what I'm saying to you is there was no independent
13 process that I went through outside of the board
14 to come to my conclusions or review of that
15 transaction. All of my review of that transaction
16 and all the review of the documents and the
17 participation was in the context of the board
18 meetings that I chaired.

19 I took my -- I took the view that I had some
20 of the best people in the state, in my judgment,
21 that were directors, and I wanted to make sure
22 they had all the information, anything that I had,
23 they had. And that this was a deliberative
24 process we went through together.

25 Q. Okay. That's not precisely my question. I just

1 was part of that process.

2 Q. So, did you believe that it would be important
3 that the whole board have substantive information
4 relating to the 38 Studios transaction roughly at
5 the same time that you would have received it?

6 A. Yes.

7 Q. And why would that be important?

8 A. Well, if the matter was going to be decided
9 by the board, which it was, and as I said, I had
10 great confidence in the board that we had put
11 together, they were top-notch people. I think --
12 I had a lot of confidence in those judgments, I
13 had a lot of trust. I would want to give them,
14 and intended to give them all the information that
15 was available to me, you know, to make sure they
16 were making the best decision possible.

17 Q. Now, you just said that you would want to make
18 sure that you were giving to the board --

19 MR. WISTOW: Are you addressing me or
20 the witness?

21 Q. -- all the information that you would have
22 received. Does that imply that you would have
23 received information?

24 A. I misspoke. The board -- most of the
25 information, and that came from the staff at EDC,

1 want to make sure that we're clear on the record,
2 and your testimony is likely to be used at trial
3 or in cross-examination of you at trial, is it
4 your testimony that the only way that you received
5 any substantive information concerning the 38
6 Studios loan was at board meetings?

7 A. That's my recollection, that I would have
8 received documents as a board member and as
9 chairman of the board, as did most of the board
10 members, ahead of time. That information was --
11 what was used for purposes of deliberation in
12 those board meetings, okay. I have no
13 recollection of any information given to me
14 separate from the board that was significantly
15 determinative or different than anything the board
16 saw.

17 Q. So, to be clear, you never saw any information
18 relating to the 38 Studios transaction that was
19 not also simultaneously provided to the other
20 board members; is that your testimony?

21 A. You know, I cannot say -- this was four years
22 ago, all right. I'm telling you that my mode of
23 operation was that anything to do with 38 Studios
24 of any substance was information that the whole
25 board should have, not just me and, therefore, it

1 or the advisors or whatever, and that they would
2 have the same information that was provided to me.

3 Q. And you thought it was important that the entire
4 EDC board have any and all information that was
5 provided to you; is that your testimony?

6 A. Yes.

7 Q. And why did you believe that to be important?

8 A. Because it was a board decision. This was
9 not my decision alone. I mean, this was a
10 quasi-independent corporation. We went through
11 lots of pains to restructure the whole
12 corporation, created a whole new board, and as I
13 said, I felt very pleased at the quality of the
14 people we were able to attract, and I wanted to
15 make sure that they could do their job.

16 These are people that sit on other boards and
17 that they were getting all the information that
18 they needed to make an informed decision.

19 Q. Now, going back to the fact that you believed it
20 was important that the board get any information
21 that you had, did you consider that you were --
22 had a fiduciary duty to the corporation, the EDC,
23 who was the plaintiff in this case, to make sure
24 that any information concerning the 38 Studios
25 loan that came into your possession was fully

| Page 17 | Page 19 |
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| <p>1 shared with all of the board, other board members?</p> <p>2 A. No. What I'm saying is, generally, the</p> <p>3 information I received was similar, okay, it came</p> <p>4 from the staff, it came from the advisors or</p> <p>5 whatever. And I, to my knowledge, did not get</p> <p>6 information, you know, separate or different than</p> <p>7 what was presented to the board. I just felt that</p> <p>8 the board should have all the information that was</p> <p>9 available.</p> <p>10 Q. A few questions back you testified that the way</p> <p>11 you got your information concerning the 38 Studios</p> <p>12 loan that would allow you to make an informed</p> <p>13 decision was at board meetings. Are you now</p> <p>14 saying there was ways in which you were getting</p> <p>15 information concerning the --</p> <p>16 A. No, I'm not.</p> <p>17 Q. Let me finish -- the 38 Studios transaction other</p> <p>18 than at board meetings?</p> <p>19 A. No, I'm saying that the basis for my</p> <p>20 decisions and my own and -- my own personal</p> <p>21 conclusion on this deal was the information that</p> <p>22 was provided at the board meetings to all of the</p> <p>23 board members. Okay.</p> <p>24 Q. Is it your -- is it your testimony that you never</p> <p>25 received any information, I say you, as Governor</p> | <p>1 experience and expertise in matters relating to</p> <p>2 public finance of all your cabinet members?</p> <p>3 A. Yes, I would say that.</p> <p>4 Q. Now, going back to your -- a couple of questions</p> <p>5 ago you said that you would want to make sure that</p> <p>6 if you got any substantive information relating to</p> <p>7 the 38 Studios loan transaction that you would</p> <p>8 want to make sure that the other board members had</p> <p>9 that, correct?</p> <p>10 A. Yes, substantive related to the transaction,</p> <p>11 the due diligence and all of those factors leading</p> <p>12 up to it.</p> <p>13 Q. Now --</p> <p>14 MR. HOLT: Max, I want you to know I</p> <p>15 brought you a copy today.</p> <p>16 MR. WISTOW: Bless you.</p> <p>17 Q. Governor, maybe you can take a look at what's been</p> <p>18 marked in an earlier deposition, actually this was</p> <p>19 marked in the deposition of Andrew Hodgkin. You</p> <p>20 know Mr. Hodgkin, do you not?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Why don't you tell the court and jury who</p> <p>23 Mr. Hodgkin is?</p> <p>24 A. He was my chief of staff.</p> <p>25 Q. You appointed Mr. Hodgkin as your chief of staff?</p> |
| Page 18 | Page 20 |
| <p>1 and ex-officio chair of the EDC board, at a point</p> <p>2 in time where that same information was not being</p> <p>3 shared with all of the other board members?</p> <p>4 A. No. There were people that had opinions,</p> <p>5 okay. For example, it will probably come up</p> <p>6 somewhere in the conversation today, Rosemary</p> <p>7 Gallogly, who was somebody I had and still have</p> <p>8 a -- great faith and confidence in, and I made her</p> <p>9 director of administration for the state and</p> <p>10 considered her very capable. You know, I asked</p> <p>11 her opinion, frankly, and she gave me some of her</p> <p>12 thoughts, but just as an outsider, somebody who</p> <p>13 was, you know, financially astute but also</p> <p>14 concerned.</p> <p>15 She had no input, she had no advantage (sic)</p> <p>16 of the board meetings, and all the information,</p> <p>17 but I had a conversation and she, I think, you</p> <p>18 know, sent me, you know, a note voicing some</p> <p>19 concerns.</p> <p>20 Q. Well, let's go back to Rosemary Gallogly. You</p> <p>21 said you hold her in high esteem?</p> <p>22 A. I do.</p> <p>23 Q. Would it be fair to say that at least while you</p> <p>24 served as Governor for eight years that Rosemary</p> <p>25 Gallogly was probably the person with the most</p> | <p>1 A. Yes, I did.</p> <p>2 Q. What qualifications did you consider that</p> <p>3 Mr. Hodgkin had that would have merited you</p> <p>4 appointing him as your chief of staff?</p> <p>5 A. Known him a long time. He was a legal</p> <p>6 counsel for me in the office and, you know, I had</p> <p>7 a lot of respect and trust in him.</p> <p>8 Q. And do you have any reason to believe that</p> <p>9 Mr. Hodgkin would have ever concealed from you in</p> <p>10 calendar year 2010 any substantive information</p> <p>11 relating to the 38 Studios transaction?</p> <p>12 A. No.</p> <p>13 Q. So can we safely say, then, to the extent that any</p> <p>14 substantive information relating to the 38 Studios</p> <p>15 transaction that came to Mr. Hodgkin's attention,</p> <p>16 that he would have brought it to your attention in</p> <p>17 turn?</p> <p>18 MR. WISTOW: Objection.</p> <p>19 A. You'll have to ask him that, but I don't --</p> <p>20 he makes -- there's lots of information that flows</p> <p>21 into a Governor's office all day long from lots of</p> <p>22 different sources. The chief of staff and deputy</p> <p>23 make decisions in terms of what they think I</p> <p>24 should review and see. So I can't -- you'll have</p> <p>25 to ask him whether he passed that information --</p> |

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| <p>1 Q. Let's take a look at what's been marked for 2 identification purposes as Exhibit 354. Do you 3 have that in front of you, sir? 4 A. Yes. 5 Q. Okay. And this is a document comprised of the 6 pages with Bates stamp numbers APS002403 through 7 and including APS002415. Do you have that in 8 front of you, sir? 9 A. Yes, I do. 10 Q. Now, this -- this on its face is an e-mail from 11 Rob Stolzman. Can you tell the court and jury who 12 Rob Stolzman is? 13 A. He was the legal counsel for EDC from the 14 firm of Adler, Pollock & Sheehan. 15 Q. This is addressed to ahodgkin@gov.state.us, is it 16 not? 17 A. I'm trying to find that on here. 18 MR. WISTOW: Third line. 19 MR. HOLT: Third line down, Governor. 20 A. Yes, okay. 21 Q. This date is April? 22 A. The print is small. 23 MR. HOLT: I have the same problem. 24 Q. Have you found that? 25 A. Yes.</p> | <p>1 Q. Now, moving down the body of this e-mail, it says, 2 "Hi, Andy. Keith asked that I forward to you the 3 drafts of the attached documents." Did I read 4 that correctly? 5 A. Yes. 6 Q. And the Andy, I assume is Andy Hodgkin, right? 7 A. I assume that. 8 Q. And Keith is Keith Stokes, right? 9 A. I believe that. 10 Q. Now, this then has -- if we go down to the second 11 from the last line which begins with the words, 12 "Exciting opportunity"; do you see that? 13 A. Yes. 14 Q. And that refers to the potential for the 38 15 Studios moving to Rhode Island, does it not? 16 A. I assume so. 17 Q. And then the e-mail from Mr. Stolzman to your 18 chief of staff, Mr. Hodgkin, goes on to state, 19 quote, "I want to thank you and the Governor for 20 allowing me the opportunity to participate in it 21 on behalf of the RIEDC." Did I read that 22 correctly? 23 A. Yes. 24 Q. Now, as you sit here today, what do you understand 25 those words to mean?</p> |
| Page 22 | Page 24 |
| <p>1 Q. Okay. And this is dated Thursday, April 1, 2010, 2 is it not? 3 A. Yes. 4 Q. And this e-mail address is Mr. Hodgkin's at the 5 Governor's office, is it not? 6 A. Yes. 7 Q. Now, this subject matter here, can you read what 8 the subject matter is aloud, please? 9 THE WITNESS: Where is it? 10 MR. WISTOW: Fifth line down. 11 A. RIEDC 38 Studios. 12 Q. Above that it has Keith Stokes' name, right? 13 A. Yes. 14 Q. Mr. Stokes was executive director of the EDC 15 during 2010, the time when the 38 Studios loan was 16 made, right? 17 A. Correct. 18 Q. And you had nominated Mr. Stokes to be the 19 executive director, had you not? 20 A. Yes, I did. 21 Q. And you had selected him; is that right? 22 A. Yes. 23 Q. Did you consider him to be qualified to have that 24 position? 25 A. Yes.</p> | <p>1 A. I have no idea. 2 Q. It would appear he's thanking both Andy and you 3 for allowing him to become involved in that 38 4 Studios loan transaction, correct? 5 A. I have no idea. Sounds gratuitous. He's the 6 counsel for EDC, so, you know, why he has to thank 7 me, I don't know -- 8 Q. Let's -- this e-mail also indicates that -- refers 9 to attached documents. And it says that the 10 documents in this e-mail, Exhibit 354, say, "They 11 include a draft memo from Keith to the Governor, 12 that is a very brief background and summary of the 13 proposed transaction in development of studios in 14 RI, a draft letter of intent between 38 Studios 15 and the RIEDC further outlining some basic terms 16 and a draft, 'Kushner,' authorizing the RIEDC to 17 guarantee 38 Studios' debt." Did I read that 18 correctly? 19 A. Yes. 20 Q. It then goes on to say, "At the suggestion of 21 House Finance Chairman Costantino, the Kushner 22 draft reflects a larger authorization for this as 23 a Job Creation Guaranty Program." Did I read that 24 correctly? 25 A. Yes.</p> |

1 Q. Now, let's go to the first attachment.
2 Incidentally, I did question Mr. Hodgkin on --
3 concerning this Exhibit 354, and Mr. Hodgkin
4 testified as follows: "In the ordinary course he,"
5 referring to you, "would have had a copy of this
6 e-mail made and given to him." So, in other
7 words, Mr. Hodgkin felt in the ordinary course he
8 would have given you this e-mail and attachments.
9 Do you have any reason to believe that that's not
10 the case?
11 MR. DeSISTO: Objection. Go ahead.
12 A. I don't recall, okay. It's very possible,
13 but I don't, you know, recall that.
14 Q. Mr. Hodgkin indicated that in the ordinary course
15 he would have given you this information.
16 MR. WISTOW: Is that a question?
17 Q. Does that accord with your understanding of how it
18 would have worked, at least with respect to the 38
19 Studios loan transaction?
20 A. Not necessarily. I don't know. I mean,
21 there's lots of information that flows, lots of
22 documents. I don't see them all, okay. And I
23 don't know whether this came to me or not. You
24 know, I'm not disputing if he said he sent it to
25 me. All I'm saying is I don't recall it.

1 something else, and I suggested he talk to our
2 EDC. But that's the last I heard of it until then
3 it surfaced that, yes, they had been talking, and
4 there may be a possibility here, and that's when
5 the process started to unfold and the board
6 process followed from that.
7 Q. Now, you're referring to a March 6, 2010
8 fund-raiser for the Rhode Island PBS Foundation
9 that was --
10 A. I think that's what it was, at Schilling's
11 house.
12 Q. That was at a private residence in Massachusetts,
13 right?
14 A. Right.
15 Q. And you went to that?
16 A. Yes. I contributed to the fund-raiser for
17 the PBS. They're doing a documentary on the
18 Bandera Brothers follow-on.
19 Q. We're going to come back to that in a minute.
20 Let's go back to Exhibit 357 (sic) if we might.
21 Let's go to the --
22 THE WITNESS: 357 or 354?
23 MR. HOLT: 354, I'm sorry, Governor.
24 Thank you.
25 Q. Let's go to the second page of 354. Do you have

1 MR. WISTOW: He didn't say he sent it
2 to you, he said in the ordinary course he expected
3 he would.
4 Q. You have no reason to disagree with Mr. Hodgkin's
5 assessment that in the ordinary course --
6 A. No. I would say that that's generally -- if
7 he thought it was something important that I
8 should see, then he would forward it to me, yes.
9 That would be the normal ordinary course.
10 Q. As of April 1, 2010, how many \$75 million loan
11 transactions were being considered by anybody at
12 EDC?
13 A. Well, there were none.
14 Q. There were none?
15 A. No. I mean, when you say EDC, you're talking
16 about the board?
17 Q. I'm talking about anyone at the EDC, staff?
18 A. EDC has constant conversations, okay, with
19 potential people that are locating here, et
20 cetera. They have a number of discussions at any
21 time. All right. But I don't consider it, if you
22 will, ripe until it's gotten to the point where
23 it's serious enough that it comes to the board.
24 And so there were discussions when I had met --
25 been to Schilling's house for a fund-raiser for

1 that in front of you?
2 THE WITNESS: 2404?
3 Q. Yes, sir, that's APS002404. Do you have that in
4 front of you?
5 A. Yes, I do.
6 Q. I'm going to ask you just to take a few moments
7 and read that, please.
8 (PAUSE)
9 THE WITNESS: Is that the end of it,
10 245.
11 MR. HOLT: Yes, APS 2404 to 05.
12 Q. Have you had an opportunity to read that document
13 to yourself?
14 A. Just now, yes.
15 Q. And can you tell the court and jury what that is?
16 THE WITNESS: I'm sorry?
17 Q. Can you tell us what is -- this document that
18 you've just looked at?
19 A. It's a briefing from Keith Stokes that they
20 have had discussions with 38 Studios, and in his
21 judgment they're in the makings of a potential
22 deal here that could be beneficial to the state.
23 Q. This on its face is in bold capital letters on the
24 top, it says Memorandum, does it not?
25 A. Yes.

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| <p style="text-align: right;">Page 29</p> <p>1 Q. Who -- is that memorandum from Mr. Stokes dated 2 April 1, 2010 addressed to you? 3 A. It's addressed to me. 4 Q. Does it appear that any other board members of the 5 EDC have received a copy of that? 6 A. No. No. By the way, not necessarily would 7 they. There are often discussions -- I talked 8 about, you know, United Natural Foods we got to 9 locate here from Connecticut. They would have 10 discussions, okay, that I would be briefed about 11 before, since I'm chairman of the board, and then 12 the question is is this substantive enough, with 13 enough meat that it should come to the board. And 14 I took this to be the same situation. 15 So I'm presuming, I don't recollect 16 completely, but I'm presuming following from this 17 was, you know, the whole process that begun at the 18 board level to present this transaction. 19 Q. Well, let's confine our attention for the moment 20 to this Exhibit 354, Pages 2404 to 2405. This is 21 only addressed to you and not to the entire board, 22 correct? 23 A. Yes. 24 Q. And it doesn't show any board members being carbon 25 copied, right?</p> | <p style="text-align: right;">Page 31</p> <p>1 in to the EDC or even perhaps your office, but 2 that they would not be brought to the attention of 3 the board until they were, I think you said 4 sufficiently substantive, or words to that effect? 5 A. Yeah. 6 Q. Do you recall -- 7 A. Either, A, they require board approval or, B, 8 would be, in this case, 38 Studios was a 9 significant transaction, the largest, would have 10 been done by EDC and, therefore, needed a thorough 11 board vetting with all of the information. As I 12 look at, you know, the information in here, I 13 think it looks to me like much of the same 14 information that was subsequently presented at 15 board meetings. 16 Q. Okay. Now, you said when I look at this 17 information, you were gesturing towards the 18 memorandum that was addressed to you from 19 Mr. Stokes dated April 1, 2010, correct? 20 A. Yes. 21 MR. WISTOW: Part of Exhibit 354. 22 Q. Exhibit 354. But at least as of April 1, 2010, 23 the information that Mr. Stokes was providing to 24 you in this memorandum had not been provided to 25 the entire board, had it?</p> |
| <p style="text-align: right;">Page 30</p> <p>1 A. No. 2 Q. Now, this memorandum to you is from Mr. Stokes, 3 the individual that you appointed as EDC executive 4 director, was part of an e-mail sent to 5 Mr. Hodgkin, correct? 6 A. Yes. 7 Q. Now, why would Mr. Stokes send an e-mail addressed 8 to you -- I'm sorry, a memo addressed to you as 9 part of an e-mail to Mr. Hodgkin? 10 MR. WISTOW: Objection. 11 A. You'd have to ask him. It's not uncommon for 12 chief of staff, you know, to be the conduit, if 13 you will, for information coming into the 14 Governor's office. 15 Q. Okay. And Mr. Hodgkin would have played that 16 role? 17 A. Yes. In his absence, Jamia McDonald is the 18 deputy. 19 Q. Either Mr. Hodgkin or Ms. McDonald would be the 20 conduit for information coming into the Governor's 21 office to be brought to your attention, right? 22 A. Yes. 23 Q. Now, you indicated that -- you made a reference, 24 Governor, and I think I understand, but I want to 25 make sure I do, that a lot of proposals would come</p> | <p style="text-align: right;">Page 32</p> <p>1 A. No, I don't believe so. But I don't think 2 that was uncommon, okay. In other words, I think 3 that normally when EDC was working on 4 transactions, you know, they would come to me at 5 some point with the broad outlines and say is this 6 something that looked like I could support. 7 And in a transaction of this size and this 8 complexity, it wouldn't be unusual at all before 9 we go to the full board -- if I said, I thought 10 that was hair brain crazy, don't do it, then it 11 didn't go to the board. So, you know, I think 12 that was, you know, understandable. 13 Q. So, then we can agree that at least as of April 1, 14 2010, you had in your possession information 15 relating to the 38 Studios loan that had not been 16 presented at a board meeting, correct? 17 A. Yeah. I had information that was an 18 assessment done by Keith and the EDC apparently 19 that they thought that the 38 Studios transaction, 20 or possibility of our being able to get them to 21 relocate here, which was consistent with the whole 22 strategy we had had for jobs of this type in the 23 city and in the state. And that he, apparently, 24 he and the team, had had conversations around what 25 they were going to require. And so, yeah, that's</p> |

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| <p>1 not unusual.</p> <p>2 Q. But again, this is information concerning the 38</p> <p>3 Studios loan that you -- was sent to you outside</p> <p>4 of a board meeting, right?</p> <p>5 A. There was no proposal. This was not a</p> <p>6 transaction before the board. This was a concept</p> <p>7 in terms of what might be required here and is</p> <p>8 this something I -- I think what Keith was looking</p> <p>9 for from me, is this something I thought merited,</p> <p>10 you know, further discussion and vetting with the</p> <p>11 whole board.</p> <p>12 Q. Going back to your use of the word "substantive,"</p> <p>13 did you have in mind, at least in part when you</p> <p>14 used that term, that there would be sufficient</p> <p>15 financial details laid out to allow for an</p> <p>16 informed and prudent decision regarding the</p> <p>17 opportunity?</p> <p>18 A. Yeah, absolutely. Yeah. It's a process that</p> <p>19 would unfold once the staff, with my concurrence,</p> <p>20 that this is something that's worth pursuing, then</p> <p>21 there's a whole process that unfolds, which is all</p> <p>22 the due diligence process and the series of</p> <p>23 meetings and all the evaluations that were done</p> <p>24 and --</p> <p>25 Q. So once you received this April 1, 2010 memorandum</p> | <p>1 then, you know, I probably indicated to him, I'm</p> <p>2 sure, I must have said, yeah, let's go forward,</p> <p>3 let's get it shaped up and presented to the board,</p> <p>4 and let's go through the process.</p> <p>5 Q. But without your concurrence, I take it,</p> <p>6 Mr. Stokes would not have proceeded to take any</p> <p>7 further steps after April 1, 2010; is that fair to</p> <p>8 say?</p> <p>9 MR. WISTOW: Objection.</p> <p>10 Q. If you had said no --</p> <p>11 A. If I said to him, no, look, this is crazy,</p> <p>12 forget it, there's no way I'm even going to bring</p> <p>13 it to the board, because I can't support this.</p> <p>14 Yeah, he wouldn't, I presume. I'm always</p> <p>15 surprised but --</p> <p>16 MR. WISTOW: I guess that's the</p> <p>17 point.</p> <p>18 Q. Now, let's go back to the -- this concept of</p> <p>19 substantive or substantive -- let's go down to the</p> <p>20 second paragraph of Exhibit 354, the -- Stokes</p> <p>21 memorandum addressed specifically to you dated</p> <p>22 April 1, 2010?</p> <p>23 A. Yup.</p> <p>24 MR. DOLAN: Tom, let me interject</p> <p>25 for the record I think this is also Plaintiff's</p> |
| Page 34 | Page 36 |
| <p>1 from Mr. Stokes, did you give Mr. Stokes the</p> <p>2 approval to take the next steps?</p> <p>3 A. I don't remember. I don't recall exactly,</p> <p>4 but that would have been -- he wouldn't take it to</p> <p>5 the board or begin the process if I hadn't said I</p> <p>6 think it's something that we should vet before the</p> <p>7 whole board.</p> <p>8 Q. Okay. So would it be fair to say that Mr. Stokes</p> <p>9 would not take any steps in furtherance of the 38</p> <p>10 Studios' loan transaction unless, to use your</p> <p>11 words, he had your concurrence; is that fair to</p> <p>12 say?</p> <p>13 A. Well, I think that's too much of a statement.</p> <p>14 There were conversations, I'm sure, he had. He's</p> <p>15 looking for structuring a deal. I don't get into</p> <p>16 all of that detail. So he's not vetting with me</p> <p>17 beforehand all the elements of the transaction.</p> <p>18 I'm saying in broad outlines, is this consistent</p> <p>19 with what we're trying to accomplish from an</p> <p>20 economic development standpoint. You know, is it</p> <p>21 something that looks like it could be a really</p> <p>22 positive thing for the state in terms of jobs,</p> <p>23 high-paying jobs in an area that seemed to be a</p> <p>24 growing area.</p> <p>25 So with that screen on it, all right, and</p> | <p>1 Exhibit 40 and has been the subject of prior</p> <p>2 questioning. I just wanted the record to reflect</p> <p>3 that.</p> <p>4 MR. HOLT: Thank you. That's noted,</p> <p>5 and I will continue to refer to this as 354 for</p> <p>6 today's purposes, but recognizing your comment.</p> <p>7 Thank you.</p> <p>8 THE WITNESS: Which paragraph?</p> <p>9 MR. HOLT: The second full paragraph</p> <p>10 on Page 1.</p> <p>11 THE WITNESS: "The company currently</p> <p>12 has"?</p> <p>13 Q. Yes. So, what's the gist of that paragraph?</p> <p>14 MR. WISTOW: Objection.</p> <p>15 A. Well, I -- my interpretation in reading it</p> <p>16 it's what the status is of the company right now,</p> <p>17 the employees they have in Massachusetts and</p> <p>18 Baltimore, what they foresee as the move to Rhode</p> <p>19 Island, how many would come, and as they ramped up</p> <p>20 over time, the additional employees that would be</p> <p>21 hired.</p> <p>22 Q. So this spells out that the company would commit</p> <p>23 to bringing 125 new employees to Rhode Island,</p> <p>24 right --</p> <p>25 MR. WISTOW: By December 31st.</p> |

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| <p>1 Q. -- by December 31, 2010?</p> <p>2 A. Yes.</p> <p>3 Q. It also speaks to an additional 175 by the end of</p> <p>4 2011, right?</p> <p>5 A. Yes.</p> <p>6 Q. And an additional 150 by the end of 2012, for a</p> <p>7 total of 450 employees, right?</p> <p>8 A. Yes.</p> <p>9 Q. So, this is a discussion of number of employees</p> <p>10 who would ultimately be located in Rhode Island,</p> <p>11 if in fact the 38 Studios got the loan from the</p> <p>12 EDC, right?</p> <p>13 A. Yes. Their plan for development, their plan</p> <p>14 for growth and all of that. And we obviously were</p> <p>15 interested in doing it to relocate all those jobs</p> <p>16 and that business here to Rhode Island.</p> <p>17 Q. It then goes on to talk about, in the third</p> <p>18 paragraph, "The company is a video game and</p> <p>19 digital media content design and production</p> <p>20 company that is developing a game product which</p> <p>21 will be released in two stages." Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And that then goes on to discuss specific games,</p> <p>24 does it not, it talks about a first stage which is</p> <p>25 commonly called a role-playing game for single</p> | <p>1 A. Yes.</p> <p>2 Q. And it then goes on to say, EA's investment to</p> <p>3 bring the RPG to market is valued at \$50 million";</p> <p>4 do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. It then if we go down to the -- a couple of lines</p> <p>7 down, it says, "38 Studios conservatively</p> <p>8 estimates gross revenues on the first phase of the</p> <p>9 game at approximately \$450 million through 2015";</p> <p>10 do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. It then discusses the MMOG, which is the massively</p> <p>13 multi-player online game phase; do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And that goes into discussions of estimated</p> <p>16 revenues, right?</p> <p>17 A. Right.</p> <p>18 Q. Where did Mr. Stokes get this information from?</p> <p>19 A. You'd have to -- I have no idea. You'd have</p> <p>20 to ask him.</p> <p>21 Q. Prior to April 1, 2010 did you have any</p> <p>22 discussions with Mr. Stokes whatsoever concerning</p> <p>23 the 38 Studios opportunity?</p> <p>24 A. Well, I think when I came back from that</p> <p>25 meeting, the fund-raiser that was at Schilling's</p> |
| Page 38 | Page 40 |
| <p>1 player on multi-platform console; did I read that</p> <p>2 correctly?</p> <p>3 A. Yes.</p> <p>4 Q. And that was then defined as RPG, right?</p> <p>5 A. Yes.</p> <p>6 Q. Then it goes on to talk about software, it being</p> <p>7 sold to customers and played on consoles, right?</p> <p>8 A. Yes.</p> <p>9 Q. It then talks about a second phase or what's been</p> <p>10 used in this litigation as a second game of a</p> <p>11 product called a, quote, "massively multi-player</p> <p>12 online game, MMOG"; do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. So that is spelling out what, at least a</p> <p>15 description of what the company's, at that point,</p> <p>16 two products were?</p> <p>17 A. The strategies were -- what the projects</p> <p>18 were, what they were trying to do, yes.</p> <p>19 Q. The fourth paragraph then goes into a discussion</p> <p>20 of the RPG phase of the game, does it not, it</p> <p>21 begins with, "The RPG." Do you have that in front</p> <p>22 of you?</p> <p>23 A. Yes.</p> <p>24 Q. Now, it then talks about EA, being Electronic</p> <p>25 Arts, right?</p> | <p>1 house for PBS, and the sequel to the Bandera</p> <p>2 Brothers, as part of when I was talking with</p> <p>3 Schilling, I said, what are you doing? And he</p> <p>4 described this business, and that he had a game</p> <p>5 company that he had I guess acquired or started in</p> <p>6 Baltimore and he had -- and what he was doing in</p> <p>7 Massachusetts, and said that he was very excited,</p> <p>8 thought that there were terrific prospects. Had</p> <p>9 been talking with Massachusetts, but frankly, you</p> <p>10 know, wasn't that thrilled with the response he</p> <p>11 got. I guess this was the end of the evening, and</p> <p>12 I said, well, why don't you talk to our people,</p> <p>13 gave him Keith Stokes' name. And I believe when I</p> <p>14 came back the next day, I might have called Keith</p> <p>15 to make him aware and say, you know, Schilling's</p> <p>16 got an interesting company that looks like it's</p> <p>17 growing, it looks like they're doing some things</p> <p>18 that are in an area that we have talked about in</p> <p>19 terms of digital media. And so I don't know</p> <p>20 whether Keith called him or whether he called</p> <p>21 Keith, but there were conversation like that</p> <p>22 before.</p> <p>23 Q. So, at that point, shortly after March 6, 2010,</p> <p>24 the fund-raiser you referred to, you would have</p> <p>25 authorized, then, Mr. Stokes to have conversations</p> |

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1 with 38 Studios that --
2 A. I didn't have to authorize. I won't use the
3 word "authorize." Okay. I constantly am out and
4 talking to businesses and business people, that's
5 what I did when I was in office, and I always
6 liked to try and recruit businesses to come. We
7 got Yardney Electric to come from Connecticut to
8 East Greenwich. In the course of those, I might
9 have said, oh, by the way, Keith, you know, this
10 is an interesting company down here that's
11 expanding or this or that.
12 It's not uncommon for me to say, I don't
13 know, it's just, you know, go take a look. It may
14 be nothing, or it may be, you know -- it may turn
15 out to be something. So that kind of a
16 conversation was not unusual for me to have with
17 the EDC, Keith's predecessor, and Mike McMahon
18 before that.
19 Q. So, based --
20 A. So it wasn't a question of my authorizing,
21 I'm just taking exception with your terminology
22 that I authorized him. He's got a job to do.
23 He's executive director of EDC. Their job is to
24 try and, you know, create jobs and get businesses,
25 keep them here, recruit, whatever it takes. So, I

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1 didn't micromanage what he did. I would pass
2 information along as I made contact with people.
3 It's up to him to pursue and then decide whether
4 it's something worth pursuing.
5 Q. You say that you would bring information to his
6 attention when you met people. So, would it be
7 fair to say that you brought the 38 Studios'
8 opportunity to Mr. Stokes' attention?
9 A. I thought I did, yes. You never know in this
10 who talked to whom. I thought I was -- I thought
11 I was the first one.
12 Q. So you believe you were the first one to have
13 spoken to Mr. Stokes?
14 A. That's what I believed at the time.
15 Q. That's what you believe?
16 MR. WISTOW: Let him finish.
17 A. That's what I believed. You know, I met Curt
18 Schilling once before at a fund-raiser in his
19 Reactive ALS -- just said hello, shake hands, et
20 cetera. And I believed that I was giving Keith a
21 lead on a potential, you know, company relocating
22 or potential company that we should look at,
23 that's all. I mean, I had no idea about their
24 finances. I knew nothing. All I knew is he's got
25 a business, he's excited about the growth. In

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1 it's an area that we have, from a strategic
2 standpoint, focused on. We wanted to try and
3 encourage more digital media, RISD producing
4 students. Hasbro had built their studio. So the
5 whole thing felt like it would be a nice new area
6 for the state. Beyond that -- I'm talking about
7 broad parameters, that's all. Then it's up to the
8 staff and the team to dig in and figuring out what
9 the transaction is and bring it to the board.
10 Q. As Governor of the State of Rhode Island and
11 chairman of the EDC board, what did you consider
12 your responsibilities were to validate any
13 financial information that was provided to you
14 concerning the 38 Studios loan?
15 MR. WISTOW: I object to coupling the
16 Rhode Island and EDC chairman together.
17 MR. HOLT: Objection noted.
18 A. I don't know if you sit on boards, okay.
19 When you sit on boards, and my role was, it's a
20 quasi-independent corporation, a very important
21 one, by the way, in terms of economical
22 development. So I was keenly interested in what
23 they were doing. I would never dig into the
24 details of -- that's what we have an executive
25 director, whole finance team and whole staff and

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1 advisors in place to do. You know, that's -- we
2 got -- in my judgment, we had an outstanding
3 board. But any board is dependent upon the
4 information being presented to them.
5 Q. Let's go back to --
6 MR. DeSISTO: Are you done?
7 THE WITNESS: Yeah.
8 Q. Let's go back to Exhibit 354, the memorandum from
9 Mr. Stokes to you. In fact, this is a memorandum,
10 again, as I say, from Stokes to you, Governor,
11 dated April 1, 2010, which is providing you with
12 pretty specific information concerning the
13 potential 38 Studios loan opportunity, is it not?
14 A. Yeah. I would view this as Keith trying to
15 sort of tell me that he thinks this is a good idea
16 and give me enough information so that will elicit
17 whether I think this is a good idea to pursue and
18 nothing beyond that. I don't know -- I'm not
19 going to make a decision based on this memo.
20 There is a whole process that then unfolded with
21 lots of presentations. All right. Your firm made
22 a presentation.
23 MR. HOLT: Actually, my firm is K & L
24 Gates, we did not make a presentation.
25 A. Your client made a presentation. There are

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| <p>1 lots of presentations made over the course of 2 several months when the board was -- we had two 3 special board meetings dedicated to nothing but 38 4 Studios, with presentations made by outside 5 experts, not just our own team, outside experts. 6 That's the basis on which the board concluded that 7 this was a transaction we're supporting. 8 Q. Going back to my question. This document, Exhibit 9 354, on Pages APS002404, 2405, this is the 10 executive director of EDC, whom you nominated, 11 providing you with information concerning the 12 contemplated 38 Studios opportunity, is it not? 13 MR. WISTOW: He's already answered 14 that yes. 15 A. Yes. 16 Q. This information relates to such things not only 17 as the number of employees, not only relating to a 18 relationship between 38 Studios and Electronic 19 Arts, but it also goes into some relatively 20 specific information concerning dollar amounts 21 that 38 Studios would be requiring, does it not, 22 on the bottom paragraph? 23 A. Yes. So, I'm presuming he had conversations 24 with 38 Studios, which I would have expected him 25 to do, and this is his summary, you know, and</p> | <p>1 increased to, I think, globally, if I read a bio 2 of yours, \$30 million; does that ring a bell? 3 A. It's off by a digit. 4 Q. 30 million? 5 A. 3 billion. I wish it had been 30. 6 Q. If I had been good at math, I would have been a 7 doctor. So \$3 billion? 8 A. Yes. 9 Q. And you were the CEO of that company. Now in the 10 course of your extensive and impressive business 11 career, did you ever hear of the term letter of 12 intent used in connection with any business 13 transaction? 14 A. Yes. 15 Q. And what do you understand the term letter of 16 intent to mean as a former banker and former CEO 17 of a \$3 billion company to mean? 18 A. Well, an outline of a potential transaction 19 and intent to proceed in good faith negotiations 20 to a transaction. That's it. 21 Q. In your experience, at what point in discussions 22 between two parties, let's say a lender and a 23 borrower, does it come -- when a letter of intent 24 would be drafted generally based on your 25 experience?</p> |
| Page 46 | Page 48 |
| <p>1 trying to really convey to me that in his judgment 2 this looks like a transaction that, you know, we 3 should really investigate. 4 Q. Let's go to Page 2406, the next page, and that is 5 I think referred to in the e-mail to your chief of 6 staff, Mr. Hodgkin, from Mr. Stolzman as being a 7 draft letter of intent. Do you have that in front 8 of you? 9 A. Yes. 10 Q. Now, before we get into questions relating 11 specifically to Exhibit 354, Pages 2406 through 12 and including 2410, before you became Governor of 13 Rhode Island, you had been employed at the Old 14 Stone Bank, right? 15 A. Correct. 16 Q. And you were one of three vice presidents 17 reporting to Ted Barnes; isn't that right? 18 A. Correct. 19 Q. And you had served on the credit committee at Old 20 Stone Bank, right? 21 A. Correct. 22 Q. And then subsequently you became the CEO of 23 Cookson America here in Rhode Island, right? 24 A. Yes. 25 Q. And while you were there, that company's revenues</p> | <p>1 MR. WISTOW: Objection. 2 A. Well, after there had been enough substantive 3 discussion, so that you could pin down, you know, 4 the parameters of a transaction. Okay. Nothing 5 is agreed, nothing is finalized, it's just the 6 outlines of a transaction potentially. 7 Q. What did you mean by the term substantive 8 parameters? 9 THE WITNESS: In what regard? 10 MR. HOLT: In regard to your answer. 11 You just gave an answer. 12 THE WITNESS: What did I just say? 13 MR. WISTOW: Maybe we should have it 14 read back. 15 MR. HOLT: Why don't you read back 16 the question, prior question and answer. 17 (LAST QUESTION AND ANSWER READ) 18 THE WITNESS: What's the question? 19 Q. The question is what did you mean in answer to my 20 last question when you said that a letter of 21 intent might be drafted after you've had enough 22 substantive discussion to understand, I think you 23 referred to the parameters of the deal; what did 24 you mean by those words? 25 A. Well, I think it's pretty straightforward.</p> |

1 You know, you want enough substance so that you
2 got the outlines of what it is, as opposed to, you
3 know, no substance whatsoever. So, you know,
4 there has to be some elements of substance. I
5 don't know a better word for it. Okay.
6 Q. And so would it be fair to say in your experience
7 that letters of intent would not be drafted until
8 enough information has been provided to the
9 individual or party drafting the letter of intent
10 to actually, you know, accurately set forth at
11 least what the substance of the prior discussions
12 had been between the parties; is that fair to say?
13 MR. WISTOW: Objection.
14 A. Yeah, I think it's outlining the parameters
15 of a transaction, okay; that's what it did, and
16 it's a draft.
17 Q. Let's go back to Exhibit 354, Pages 2406 through
18 2410. This is -- appears to be a draft of a
19 letter of intent, does it not?
20 A. Yes.
21 Q. And this is the draft letter of intent that
22 Mr. Stolzman indicates that he had prepared, and
23 he references in his April 1, 2010 e-mail to Andy
24 Hodgkin, right?
25 A. Yes.

1 guess?
2 Q. Who would you have assumed would have authorized
3 Mr. Stolzman to proceed?
4 MR. DeSISTO: Objection.
5 MR. WISTOW: Objection. Objection.
6 A. Well, I would assume that the executive
7 director, Keith Stokes, would have authorized him
8 because it's EDC that's paying the bills to go
9 ahead and, you know, draft something. But I don't
10 know that for fact.
11 Q. Why did -- do you have any idea why Mr. Stolzman
12 would have sent you a draft of this letter of
13 intent?
14 MR. WISTOW: Objection.
15 A. No, I don't.
16 Q. Do you think it was because you were serving as
17 chairman of the EDC board?
18 MR. WISTOW: Objection.
19 A. Again, I don't. It would be pure conjecture.
20 Again, you'd have to ask him why. I believe
21 probably following on this is when we commenced
22 the process of the board review because -- but you
23 know, why he put me in the loop on this, I don't
24 know.
25 Q. It's your testimony you have no idea why

1 Q. Now, who authorized Mr. Stolzman to draft this
2 letter of intent?
3 A. I have no idea.
4 Q. Well -- you have no idea?
5 A. No.
6 Q. Okay. Let's --
7 A. You'll have to ask him who authorized him to
8 do it.
9 Q. Okay. And this was, again, part of the documents
10 that were sent to your chief of staff on April 1,
11 2010, right?
12 A. Yes.
13 Q. Now, let's --
14 A. Sorry, I'm nodding. Yeses or nos.
15 Q. Do you recall having seen this in around April
16 2010?
17 A. No, I don't recall.
18 Q. You have no idea who would have authorized
19 Mr. Stolzman to draft this?
20 MR. WISTOW: He said that.
21 A. No, I don't know who did. You asked me
22 specifically who authorized him. I said I don't
23 know who authorized him, and I wouldn't
24 necessarily, you know.
25 MR. WISTOW: Do you want him to

1 Mr. Stolzman would have put you in the loop on
2 this?
3 MR. WISTOW: Objection.
4 A. Not on the draft, okay. It's pretty clear
5 why Keith would have sent me the memo, I said
6 that. Why they would put the draft of a letter of
7 intent or concept to me, no. I mean, it's not my
8 decision, okay. My decision is as to whether this
9 is a matter that should be -- it should come
10 before the full board.
11 Q. That would have been your decision?
12 A. Well, yes.
13 Q. And this type of information would have been the
14 type of information that you would have considered
15 in determining whether or not to bring this before
16 the full board; is that your testimony?
17 A. Not -- no, not the draft letter of intent. I
18 don't even recall seeing that, okay. The
19 briefing, that I take this as a briefing, APS 24
20 and 05, I take that to be sort of a briefing from
21 Keith based on conversations he and whoever else
22 have had, that this -- there's a potential
23 transaction that he thinks we should look at and
24 is basically giving me enough information to
25 decide whether or not we should.

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| <p style="text-align: right;">Page 53</p> <p>1 Q. Now, judging from this letter of intent, which is 2 at 2406 to 2410, Exhibit 354, would it be fair to 3 say that this contains a number of substantive 4 financial terms and conditions relating to a 5 potential \$75 million loan from EDC to 38 Studios? 6 A. Yes. Yeah, it would look to me that they had 7 discussions. Who the they is, I don't know but 8 Stolzman -- Rob has drafted this, so somebody had 9 had enough discussions about what their needs 10 were, what their plans were, and what we might be 11 able to structure. But by the way, nothing has 12 gone before the board. There were no approvals, 13 there is not even a tacit approval on anything. 14 This is conversation going on between the staff 15 and a potential, you know, company that 16 transaction, and a company we're trying to locate, 17 relocate to Rhode Island. 18 Q. Okay. Going back to what you referred to as a 19 briefing memorandum that's the memo from you to 20 Stokes dated April 1, 2010. Is the information in 21 that briefing memorandum, APS 2404 to 2405, the 22 type of information that you believed ultimately 23 should be brought to the board's attention to 24 allow them to make an informed decision as to 25 whether or not to approve a deal?</p> | <p style="text-align: right;">Page 55</p> <p>1 know exactly. 2 Q. Do you -- did you ever -- I know the board members 3 have testified about this topic. Do you recall 4 reaching an understanding that Wells Fargo had 5 been advising 38 Studios in connection with 6 so-called equity PPM to raise funds for 38 7 Studios? 8 A. You know, I can honestly say I don't remember 9 the exact context. I remember Wells Fargo's name 10 coming up in the context of 38 Studios, but 11 exactly what, you know, the firm you're 12 representing was doing, I just don't remember. 13 Don't recall. 14 Q. Let's go back to the briefing memorandum. The 15 first sentence of that memorandum is addressed to 16 you and, again, it's addressed to you, not Donald 17 Carcieri, Chairman of EDC. It's addressed to you, 18 Governor Donald L. Carcieri, is it not? 19 A. Yes. 20 Q. And can you read aloud for us, please, the first 21 sentence in the briefing memorandum that 22 Mr. Stokes sent to you on April 1, 2010? 23 A. It says, "Governor, as you know, we have been 24 meeting with Curt Schilling and his company, 38 25 Studios, regarding their potential relocation to</p> |
| <p style="text-align: right;">Page 54</p> <p>1 A. A lot more than this. The board process -- 2 this is just, I take it, to be the outlines, okay, 3 you know, somebody's idea of what this company 4 could achieve, et cetera. But what the board 5 would need in order to make an informed decision 6 was much more than this, and that's the process 7 that unfolded. As I said, we had lots of outside 8 advisors come in, including your client, made 9 presentations about the industry, about 38 Studios 10 and, you know, it was a deliberative process, 11 so -- 12 Q. By the way, when was the first time that you heard 13 of the name Wells Fargo mentioned in connection 14 with the 38 Studios transaction? 15 A. I don't recall. You know, probably in the 16 context of the team that was, you know -- but I 17 don't recall, it was at a board meeting, I 18 believe. 19 Q. Was it your understanding that Curt Schilling had, 20 and I say Curt Schilling, his company, 38 Studios, 21 had retained Wells Fargo in an effort to do an 22 equity raise in the capital markets? 23 A. I can't -- you know, I really cannot say 24 exactly that I recall that. I do recall Wells 25 Fargo's name coming up, but the context, I don't</p> | <p style="text-align: right;">Page 56</p> <p>1 and expansion in Rhode Island." 2 Q. What do you understand those words to mean, as you 3 sit here today? 4 A. Exactly what it says. 5 MR. WISTOW: I object. 6 Q. What is it that -- let me try another question. 7 A. If you're going to say that, did I know he 8 was having conversations with 38 Studios, of 9 course, I assumed he was. I told him to -- I 10 didn't tell him to, but I gave him the lead when I 11 had come back thinking I was introducing a whole 12 new concept. So, you know, I presume, Tom, that 13 he was having conversations. 14 (DEFENDANTS' EXHIBIT 801 15 MARKED FOR IDENTIFICATION) 16 Q. Governor, I placed before you what has been marked 17 for identification purposes in your deposition as 18 Exhibit 801; do you have that? 19 A. Yes, I do. 20 Q. And can you tell the court and jury what that is? 21 A. Looks like a newspaper article Katherine 22 Gregg, Providence Journal dated June 2, 2014, 23 headlined, "Why did Fox and Murphy sign 24 nondisclosure agreements with 38 Studios?" 25 Q. Now, this article by Ms. Gregg of the Providence</p> |

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| <p style="text-align: right;">Page 57</p> <p>1 Journal it states that, Former House Majority 2 Leader Fox had signed a non-disclosure agreement 3 on October 8, 2000" -- "2009," does it not? 4 A. Yes, it does. 5 Q. And it also indicates that the then House Speaker 6 Murphy also signed a nondisclosure? 7 MR. WISTOW: You mean former? You 8 mean former? 9 THE WITNESS: Then. 10 MR. WISTOW: You mean former. 11 THE WITNESS: I don't remember 12 whether he was still Speaker in '09. 13 Q. Let's just -- 14 A. Do you want a technical -- 15 MR. HOLT: I understood. 16 A. -- technical verification. 17 MR. HOLT: It's even difficult in 18 Massachusetts. We change them quite frequently. 19 (OFF THE RECORD) 20 Q. Without putting too fine a point on it, this 21 article, Exhibit 801, from the Providence Journal, 22 which is dated June 2, 2014 suggests that House 23 Speaker Murphy and former -- and former -- now 24 certainly former House Majority Leader Fox, had 25 signed nondisclosure agreements with 38 Studios in</p> | <p style="text-align: right;">Page 59</p> <p>1 Q. Did you have any discussions with Speaker Fox at 2 any time prior to March 6, 2010 concerning 38 3 Studios? 4 A. I don't believe -- no, I don't -- I thought I 5 was the one giving the lead, okay. I thought I 6 was the one that found, you know, 38 Studios as a 7 possible -- I had no idea there were other 8 conversations that preceded that, none whatsoever. 9 Q. Now, how was it that you came to attend a 10 fund-raiser at a private home in Massachusetts on 11 March 6, 2010? 12 A. I can't remember that. I remember -- it 13 keeps coming to me, Tim Gray. There was a -- 14 Q. Tim Gray Communications? 15 A. There was a young man that worked, I think at 16 the time he was working in the treasurer's office, 17 okay, who was trying to raise money, trying to 18 help raise money for PBS for, as I said, this 19 Bandera Brothers sequel or some take-off on that. 20 And I was -- I can still picture it, I was leaving 21 the office, and he was coming down the stairs and 22 had an envelope, a manila folder, and said, 23 Governor, he said, I know you're a supporter of 38 24 Studios -- I mean, not 38 Studios -- of PBS, okay, 25 and you know, he said that Schilling is a big</p> |
| <p style="text-align: right;">Page 58</p> <p>1 October 8, 2009, right? 2 A. Yes. 3 Q. It then it goes down further to reference you, 4 does it not, in that same article? 5 A. Yes. 6 Q. And that says, "At the fund-raiser," and I think 7 that's the fund-raiser we've been talking about 8 today? 9 A. Yes. 10 Q. "At Schilling's house on March 6, 2010, Carcieri 11 found himself chatting with the ex-baseball 12 star about" -- "the ex-baseball star about his 13 video game company." It quotes you as saying 14 that. 15 A. I don't either -- 16 Q. "You should be right there in Providence, recalled 17 Carcieri in a 2010 interview. I wasn't thinking 18 anything would come of it." Did read it 19 correctly? 20 A. Yes. 21 Q. Is it your testimony under oath today the first 22 time you heard of 38 Studios was at Curt 23 Schilling's private residence in Medfield? 24 A. Absolutely. This was as much a surprise to 25 me as lots of people.</p> | <p style="text-align: right;">Page 60</p> <p>1 World War II guy and is having a fund-raiser and, 2 you know, it would be really wonderful if you 3 could attend that and support, you know, the 4 fund-raiser. I don't know if it was Tim Gray. I 5 told you I couldn't remember who it was. So 6 that's how -- 7 (DEFENDANTS' EXHIBIT 803 8 MARKED FOR IDENTIFICATION) 9 Q. Now, we've marked as Exhibit 803, a document which 10 bears the Bates stamp OOG 10652 through and 11 including OOG 654. Do you have that in front of 12 you? 13 A. Yes. What I have is "Governor's Schedule, 14 March 6, 2010, EDC Board Strategy in the morning," 15 and on the backside, "Travel to Schilling 16 residence." 17 Q. Okay. So, let's go to Page 654. 18 A. I don't know what you're referring to, Tom. 19 All I have is in the front and back of this one. 20 Q. Well, you know what, it looks like we had, with 21 the double copying, we might not have gotten that. 22 THE VIDEOGRAPHER: Would you mind 23 just taking one second so I can change tapes? 24 MR. DeSISTO: Can we take a break? 25 MR. HOLT: That's fine.</p> |

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1 THE VIDEOGRAPHER: This is the end of
2 Disk Number 1.
3 (RECESS)
4 THE VIDEOGRAPHER: We're back on the
5 record.
6 Q. Now that we're back on the record, maybe some
7 quick housekeeping, and if I could ask the
8 Governor just to hand me back what's been marked
9 as Exhibit 803, which we previously identified as
10 being a document comprising OOG 10652 through OOG
11 654. It was missing the last page, so if I could
12 have the record reflect that we now have a
13 complete set of Exhibit 803 for identification.
14 (OFF THE RECORD)
15 THE WITNESS: I was right, it was
16 Tim Gray.
17 Q. Directing your attention to Exhibit 803, your
18 memory was correct, this document appears to be
19 your schedule from Saturday, March 6, 2010, and it
20 does, I guess, reference Tim Gray, the individual
21 that you thought had caused you to be invited,
22 right?
23 A. Yes.
24 Q. Now, this was a Saturday, right --
25 A. Yes.

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1 Q. -- schedule. Now, this was a fund-raiser you
2 referred to. Again, as we know it was at Curt and
3 Shonda Schilling's home in Medfield, Mass?
4 A. Yes.
5 Q. If we go to Page 10654, this has a 6 P.M. to 8
6 P.M., right?
7 A. Yes.
8 Q. And it shows you would be attending that
9 fund-raiser there during that time frame, right?
10 A. Yes.
11 Q. Now, incidentally, do you recall -- you've had a
12 pretty good memory so far. Do you recall whether
13 you went to the other event that was on your
14 schedule here?
15 A. I don't. I don't think so. Generally, if it
16 was in italics (sic) -- italicized words like
17 that, it was more like, if you can make it.
18 Usually the ones in bold letters meant I said I
19 would be there. So, on that basis, I assume that
20 I did not.
21 Q. Okay. Well, who made the decision that you would
22 attend a party at a private residence in Medfield,
23 Massachusetts, but not go to an event in your own
24 hometown of East Greenwich, Rhode Island, on that
25 same night?

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1 A. I would. We had scheduling meetings every
2 few days and, you know, I went over that with the
3 staff, and I would say certain things I would try
4 to get to, but no promises. Others I would commit
5 to being there.
6 Q. Now, how did you get to the Schilling private
7 residence, did you drive yourself in your own car?
8 A. No, I think the state trooper would have
9 driven me.
10 Q. I take it that as Governor you took --
11 MR. WISTOW: Don't mention his name,
12 they're going to try to take his deposition.
13 Q. I take it that it was your practice to use your
14 official vehicle with your state trooper on
15 official state business, right?
16 A. Yes. You know, most of the time. In fact,
17 for security reasons, virtually any place that we
18 went, you know, the troopers would insist that
19 they generally, you know, be in attendance.
20 Q. But did they drive you up there to this meeting?
21 A. I think so, yeah.
22 Q. And did you consider attendance at the Schilling
23 fund-raiser at his house in Massachusetts to be
24 official state business?
25 MR. WISTOW: Objection.

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1 A. Well, PBS, RI PBS, I was, you know,
2 supportive of them over the years. Used to go
3 on -- they had a number of programs that I went
4 on, and so I thought, you know, a fund-raiser for
5 them would be something that I would consider to
6 be -- you know, I wrote a personal check to the --
7 as a donation to the cause. So it's not that this
8 was all state expense.
9 Q. Do you have any idea why Curt Schilling would be
10 doing a fund-raiser for the Rhode Island PBS
11 Foundation, given the fact that he was in
12 Massachusetts and WGBH has a similar --
13 MS. CONCANNON: Objection.
14 A. No, I don't know. Again, you'd have to ask
15 him. From what I observed, he was a military
16 history buff, had a lot of collections. In fact,
17 the Bandera Brothers, if I recall, that evening he
18 had flown in two of the actual members of that
19 group that were in their late 80s, I think one was
20 in their 90s, that actually came in for the
21 evening and spoke. And so I think how he got
22 connected to RI PBS, I don't know, but he was
23 supportive of documentaries like that about World
24 War II, in particular. Why he did, I don't know.
25 Q. You mentioned that you think now that Mr. Gray

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1 handed you a file folder with an envelope in it
2 with the invitation to this March 6th fund-raiser,
3 right?
4 A. Yeah. Or I could have said, give it to the
5 scheduling people, which is what I often did. But
6 I remember seeing something about a date and a
7 time.
8 Q. And is it consistent with your recollection that
9 Tim Gray, at least as of March 6, 2010, was
10 providing certain PR services to Frank Caprio as
11 treasurer?
12 A. I thought he worked for him. I didn't know.
13 There was some association with, you know, the
14 treasurer's office that I understood, but that's
15 all.
16 Q. I guess --
17 A. By the way, he was -- I think he was actually
18 trying to help PBS do the fund-raising and
19 actually maybe do some of the work to produce this
20 documentary, was my understanding.
21 Q. I'm trying, just trying to get at your motivation
22 for going on a Saturday night in March, driving up
23 to Medfield, Massachusetts to a fund-raiser. Was
24 it personal interest?
25 A. I did a lot of that. I did a lot of that.

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1 Q. Now, prior to March 6, 2010, is it your testimony
2 that you had no conversations with Gordon Fox
3 concerning 38 Studios?
4 A. No, none.
5 Q. Earlier, several questions back before we took our
6 break, you indicated that you believed that you
7 were the person who brought 38 Studios to Keith
8 Stokes' attention; do you remember telling us
9 that?
10 A. Yes.
11 Q. Then you seemed to say that you thought you were,
12 but you're not sure if somebody else did, or was
13 that your intention?
14 MR. DeSISTO: Objection.
15 A. Well, it's clear, other people had had
16 conversations with -- I never heard of 38 Studios
17 until that evening.
18 Q. Well, as you sit here --
19 MR. WISTOW: Could the record reflect
20 the Governor was lifting up an exhibit. Why don't
21 you identify it for the record.
22 THE WITNESS: What came out in the
23 newspaper this past summer was that there were --
24 there had been a number of contacts from senior
25 legislative leaders with Schilling and 38 Studios.

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1 MR. WISTOW: Referring to exhibit --
2 what number is that?
3 THE WITNESS: 801.
4 A. So, that was completely unknown to me, Tom.
5 Q. Well, let's go to Exhibit 801, and maybe you can
6 take a moment there to take -- to look at that.
7 Does anything in Exhibit 801, the Stanton article
8 dated June 2nd, 2014, indicate that --
9 A. I'm sorry, this is a Katherine Gregg article.
10 Q. I'm sorry, Katherine Gregg. Is there anything in
11 Exhibit 801, the Gregg article, that states that
12 anyone had contacted Keith Stokes with the 38
13 Studios opportunity before March 6, 2010? Does it
14 say that anywhere?
15 A. I don't know. I've got to read it.
16 MR. WISTOW: The document speaks for
17 itself.
18 MR. HOLT: Note the objection.
19 MR. WISTOW: He's going to read
20 through the whole thing.
21 MR. HOLT: One page. Note the
22 objection.
23 (PAUSE)
24 THE WITNESS: Your question was?
25 (QUESTION READ)

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1 A. Not that I can see, no.
2 Q. Do you have any specific knowledge that anyone had
3 contacted Mr. Stokes or anyone else at 38
4 Studios -- anyone else at EDC concerning 38
5 Studios prior to March 6, 2010?
6 A. No.
7 Q. Now, while you were at the Schilling fund-raiser
8 on March 6, did you see anyone whom you recognized
9 from Rhode Island there?
10 A. Well, I don't remember, actually. I wasn't
11 certain whether Bill Murphy was there or not.
12 Okay. I asked that question, and I don't
13 remember, no.
14 Q. Bill Murphy was the former Speaker who is
15 referenced in the Gregg article, right?
16 A. Yes. But I'm not saying he was. I don't
17 recall. I just don't -- I was questioning myself
18 whether anybody that I remembered seeing there,
19 but so it's possible but I don't -- I don't
20 recall.
21 Q. What caused you to question yourself as to whether
22 Murphy was there?
23 A. Well, because Tim Gray -- not just Murphy,
24 but Tim Gray, there had been a connection, and I
25 assumed there might be others because Tim was in

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| <p style="text-align: right;">Page 69</p> <p>1 and around the State House. I don't know who else 2 had seen invitations to it. It wouldn't surprise 3 me if others had, but you know -- 4 Q. How about Mike Corso? 5 A. I never knew Mike Corso and didn't know who 6 he was. I wouldn't know him if he walked in the 7 door now. 8 Q. Anyone from Representative Costantino's office -- 9 or Representative Costantino himself? 10 A. I don't know. 11 Q. Now, going back to the Exhibit 354 which was that 12 Thursday, April 1, 2010 e-mail from Stolzman to 13 Andy Hodgkin? 14 A. Yes. 15 Q. Now, by my reckoning, March 6 was on a Saturday, 16 and this e-mail is dated Thursday, April 1, 2010. 17 That is slightly more than three weeks after you 18 would have told, or at least identified 38 Studios 19 as a potential opportunity to Mr. Stokes, right? 20 A. Yes. 21 Q. And by the calculation I did, by reference to a 22 calendar, there were approximately 15 business 23 days between your going to the Schilling 24 fund-raiser on March 6, 2010 and the date of this 25 e-mail, Exhibit 354, okay. Now, this term sheet</p> | <p style="text-align: right;">Page 71</p> <p>1 about what his company was and what he was doing, 2 and relayed that information to Keith and said 3 this may be something, you know, we should look 4 at. That's -- so, the fact that he followed up 5 and had conversations would be understandable. 6 Q. Okay. Now we're going to move on to another 7 document. 8 (DEFENDANTS' EXHIBIT 805 9 MARKED FOR IDENTIFICATION) 10 Q. I'm going to ask you if you could just take a look 11 at Exhibit 805. Exhibit 805 is a document 12 comprised of Bates stamp APS 2386 through and 13 including APS 2402. Do you have that in front of 14 you? 15 A. Yes, I do. 16 Q. Now, this appears on its face to be an e-mail from 17 Stolzman to Michael Corso dated April 1, 2010; do 18 you see that? 19 A. Yes, I do. 20 Q. And that's the same date that you would have 21 received the April 1 e-mail and attachments that 22 you've been talking about, right? 23 MR. WISTOW: Objection. 24 A. Yes, four minutes later. 25 Q. And is it your testimony that you had no idea who</p> |
| <p style="text-align: right;">Page 70</p> <p>1 contained specific information regarding a 2 particular transaction under contemplation. Do 3 you know how was it that that information got 4 presented, analyzed and put into a term sheet 5 within the space of 15 business days after you 6 first met the Schilling household? 7 MR. WISTOW: Objection. 8 A. I have no idea. I don't know who did it, 9 when it was done, how it was done. 10 Q. Well you said you had no idea who did what, 11 prepared the letter? 12 A. Yeah. Well, I know Stolzman prepared the 13 letter, but who did all the analysis that you're 14 referring to, I don't know. 15 Q. Okay. In the memorandum addressed to you, the 16 first sentence says, "Governor, as you know, we 17 have been meeting with Curt Schilling and his 18 company, 38 Studios, regarding their potential 19 relocation to and expansion in Rhode Island." Do 20 you see that? 21 A. Uh-huh. 22 Q. Was that your understanding at the time? 23 A. What I said earlier, I came back from that 24 fund-raiser, and based on a very brief 25 conversation that I had had with Curt Schilling</p> | <p style="text-align: right;">Page 72</p> <p>1 Mr. Corso was, at least as of April 1, 2010? 2 A. Yes. 3 Q. Do you have any -- do you know why that 4 Mr. Stolzman would have been sending this to 5 Mr. Corso? 6 A. No, I do not. Could I add, subsequently, 7 when the board process started, there was a 8 meeting at EDC's office with Curt Schilling and 9 his -- Jennifer MacLean or whatever, and a third 10 person that I did not know who was introduced to 11 me as Michael Corso. My understanding is that he 12 was a financial advisor, that's what I was told 13 when I asked, who's this guy, that he was a 14 financial advisor to 38 Studios. So, that was the 15 first time I met him, first time I'd ever seen him 16 that I would have recognized. 17 Q. I'm sorry, I didn't mean to interrupt you. 18 A. No, no. That's the first time I ever met 19 him. 20 Q. Now, you just referred to 38 Studios -- 21 A. No, EDC. 22 Q. I'm sorry, at EDC. The topic of which would have 23 been 38 Studios? 24 A. Yes. It was one, prior to one of the board 25 meetings when Schilling and his management team</p> |

1 were making a presentation to the board.
2 Q. Now, I'm going to show you this in a few minutes,
3 but in the interest of time here, there is a copy
4 of your schedule for April 9, 2010 which indicates
5 that you would have been going to a meeting at EDC
6 to meet with Curt Schilling. Does that generally
7 accord with your recollection of the time frame?
8 A. Yes. Yup. Yup.
9 Q. So that would have been -- you recall being at
10 that meeting with Mr. Schilling?
11 A. Yeah. If I recall, it was prior to the board
12 meeting that day, you know, is my recollection.
13 Q. An EDC board meeting?
14 A. Yeah.
15 Q. And do you recall what was discussed at that
16 meeting on April 9, 2010 that you attended
17 with --
18 A. No. It was more just a little bit of meet
19 and greet and, you know, Governor, this is going
20 to be an exciting opportunity. He was excited
21 about the potential. So it was just a meet and
22 greet. There was nothing that I recall of
23 substance discussed.
24 Q. Now, we can get to that document but that schedule
25 suggests that either/or both Andy Hodgkin or Jamia

1 of them were in attendance.
2 MR. WISTOW: Why don't you show him
3 the schedule, what's the big deal?
4 MR. HOLT: We're going to get there.
5 Q. Now, I think you indicated that, I asked you what
6 was discussed at that meeting, I think you said 38
7 Studios was making a presentation?
8 A. My recollection is it was just a bit of a
9 meet and greet before the board meeting and that
10 38 Studios was making a presentation of one of
11 many to the board or were going to be available at
12 the board meeting.
13 Q. How long were you at that meeting?
14 A. I don't recall.
15 Q. Did you have any other board members with you, to
16 the best of your recollection?
17 A. No. As I said, this was a meet and greet,
18 kind of, with the Governor sort of thing. It was
19 very -- you know, very short, as I recall but --
20 Q. When you say meet and greet with the Governor,
21 obviously, that's you that would have been there?
22 A. Keith wanted me to meet them.
23 Q. And did they provide you with any information
24 concerning 38 Studios --
25 A. Not that I recall.

1 McDonald would have attended that meeting with
2 you. Do you have a recollection if they attended?
3 (PARTIES TALKING OVER EACH OTHER)
4 MR. WISTOW: Hold. Hold. Wait a
5 minute. I object to any reference purporting to
6 say what the document says. Why don't you give
7 him -- put the document in as an exhibit.
8 MR. HOLT: We're going to get there.
9 MR. WISTOW: No, no, I'm not going to
10 let him answer it.
11 MR. HOLT: You're instructing him not
12 to answer?
13 MR. WISTOW: Yes, I'm going to
14 instruct him not to answer what the document says.
15 Why can't you show him the document, or let me see
16 the document.
17 MR. HOLT: Read the question back.
18 (QUESTION READ)
19 MR. WISTOW: I suggest you show him
20 the schedule. You said schedule suggests.
21 MR. HOLT: Are you instructing him
22 not to answer?
23 MR. WISTOW: I'm not instructing him.
24 If he can remember what the schedule says.
25 A. The answer -- I don't remember whether either

1 Q. -- transaction?
2 A. Not that I recall.
3 Q. I'm going to ask you to take a look at what has
4 been previously marked as Hodgkin Exhibit 355, and
5 maybe if you could just take a moment and look at
6 that.
7 (PAUSE)
8 Q. Can you identify Exhibit 355 for us, please?
9 A. It's my schedule. Governor's schedule,
10 Friday, April 9th, meeting with Keith Stokes 9 to
11 10 at EDC, attending: Mike Corso, Steve Lane,
12 Mike Saul, Andy Hodgkin, Jamia McDonald.
13 Q. And is this the meeting you were referring to in
14 our previous conversation?
15 A. No, it isn't. Actually, I remember it might
16 have been a subsequent meeting very briefly before
17 a board meeting because there's no board meeting
18 here with Schilling. I don't recall this meeting,
19 really.
20 Q. Well, do you recall whether or not Mr. Schilling
21 ever attended meetings at the EDC in which you
22 were in attendance?
23 A. Yes.
24 Q. And do you recall if the 38 Studios transaction
25 was discussed at this particular meeting?

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| <p style="text-align: right;">Page 77</p> <p>1 A. No.</p> <p>2 MR. WISTOW: Which meeting are you</p> <p>3 talking about?</p> <p>4 THE WITNESS: If you're talking</p> <p>5 about this one in the exhibit.</p> <p>6 MR. WISTOW: 355?</p> <p>7 MR. HOLT: 355.</p> <p>8 A. 355, no.</p> <p>9 Q. Well, it references Mike Corso?</p> <p>10 MR. WISTOW: You interrupted. He</p> <p>11 never finished his answer.</p> <p>12 A. I'm presuming it was, but I don't recall the</p> <p>13 substance or anything of this meeting. Steve Lane</p> <p>14 is another board meeting -- another board member,</p> <p>15 so I have no recollection of this.</p> <p>16 Q. Well, confining your attention to Exhibit 355,</p> <p>17 you've identified it as being your schedule for</p> <p>18 April 9, 2010 which was a Friday, traveling to</p> <p>19 EDC's offices. It then indicates, meeting with</p> <p>20 Keith Stokes and also has attending Mike Corso,</p> <p>21 and we can agree that at least at some time you</p> <p>22 learned that Mr. Corso was a financial</p> <p>23 representative?</p> <p>24 A. Yeah, I said that. I think I said that</p> <p>25 earlier. In one of these meetings, it might have</p> | <p style="text-align: right;">Page 79</p> <p>1 that whatsoever. If you're inferring since he was</p> <p>2 representing 38 Studios that that could have been</p> <p>3 a subject of the conversation, that's possible,</p> <p>4 but I don't recall it.</p> <p>5 MR. WISTOW: Can we establish if the</p> <p>6 meeting ever in fact took place just because it's</p> <p>7 on the schedule?</p> <p>8 Q. Do you believe that this meeting took place?</p> <p>9 A. I don't know. I said I had no recollection</p> <p>10 of this.</p> <p>11 Q. Governor, I'm going to ask you to take a look at</p> <p>12 what's been marked Exhibit D-120. If you could</p> <p>13 just take a moment and look at that, please?</p> <p>14 A. Uh-huh.</p> <p>15 Q. Now, this is a series of e-mails, the first of the</p> <p>16 e-mail thread is at the bottom of Exhibit D-120</p> <p>17 which is an e-mail series, Thursday, April 8,</p> <p>18 2010; do you see that?</p> <p>19 A. I'm sorry, because I'm looking at this, and</p> <p>20 coming back to Max's point, what was on the</p> <p>21 schedule, the schedule was put together days</p> <p>22 beforehand. So, often there are changes in</p> <p>23 attendees, and if I read it, it looks like --</p> <p>24 Q. When you said read this, you're referring to</p> <p>25 Exhibit D-120?</p> |
| <p style="text-align: right;">Page 78</p> <p>1 been this one, it might have been in the one -- I</p> <p>2 think there was another meeting when he was there</p> <p>3 briefly before a board meeting with Schilling. He</p> <p>4 was in attendance with Curt Schilling. That's</p> <p>5 when I found out who he was and who he was</p> <p>6 representing.</p> <p>7 Q. Okay. Would it have been the practice of your</p> <p>8 staff to advise you in advance of a meeting such</p> <p>9 as this who was going to be in attendance at that</p> <p>10 meeting?</p> <p>11 A. Well, I would have a copy of this before I</p> <p>12 went.</p> <p>13 Q. So you would have had a copy of Exhibit 355</p> <p>14 identifying Mike Corso being in attendance, right?</p> <p>15 A. Yes.</p> <p>16 Q. And do you recall if you had asked anybody on</p> <p>17 April 9th prior to going to the meeting who this</p> <p>18 guy Mike Corso was?</p> <p>19 A. No.</p> <p>20 Q. But based on the fact of what you know now about</p> <p>21 Corso, can we reasonably assume that the topic</p> <p>22 being discussed at 38 -- at the EDC offices on</p> <p>23 April 9, 2010, would have related, at least in</p> <p>24 part, to the 38 Studios loan?</p> <p>25 A. I don't know that. I have no recollection of</p> | <p style="text-align: right;">Page 80</p> <p>1 A. D-120. They were saying that at that meeting</p> <p>2 at 9:00 A.M. that Schilling was there, but I don't</p> <p>3 see any reference to the others --</p> <p>4 Q. Well --</p> <p>5 A. -- or Corso and Mike Saul and Keith.</p> <p>6 Q. So, in other words, this e-mail from Sharon Penta,</p> <p>7 who was an employee at EDC, was addressed to Al</p> <p>8 Verrecchia, who was a vice chair, was he not, of</p> <p>9 the EDC board?</p> <p>10 A. Yes.</p> <p>11 Q. At that time was Mr. Verrecchia also the CEO of</p> <p>12 Hasbro Corporation?</p> <p>13 A. I don't think he was still CEO or whether he</p> <p>14 was board chair, but he was a senior role at</p> <p>15 Hasbro, yeah.</p> <p>16 Q. And it also references -- it also refers to Steve</p> <p>17 Lane, does it not?</p> <p>18 A. Yes.</p> <p>19 Q. And the reference is meeting with Curt Schilling</p> <p>20 on Friday at 9:00 A.M. at EDC, right?</p> <p>21 A. Yes.</p> <p>22 Q. And it references Schilling, Corso, Keith and Mike</p> <p>23 Saul, right?</p> <p>24 A. Yes.</p> <p>25 Q. So, with this in mind, would this suggest to you</p> |

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| <p>1 as sit here today that in fact there was a meeting 2 on April 9 at EDC, at which at least you, 3 Mr. Schilling and Mr. Corso, Keith Stokes and Mike 4 Saul would have been in attendance? 5 A. Yeah, it's actually what I thought, you know, 6 it's consistent with what I thought it was. As I 7 said, that's why this meeting didn't make sense to 8 me when you asked me -- the conflict in the 9 attendees and what it was because my recollection 10 was that Schilling was there. 11 Q. Now, going back to your schedule for April 9, 12 2010, Hodgkin 355, maybe you could just take a 13 brief look at that. This suggests, "Staff: Andy 14 Hodgkin, Jamia McDonald," is referenced there? 15 A. Uh-huh. 16 Q. Why would their names appear on your schedule in 17 connection with a meeting at EDC concerning 38 18 Studios? 19 A. I don't know. I don't know. 20 Q. Was it -- 21 A. They might have wanted just to be informed 22 because, this is a sidebar, but no one of the 23 issues with independent quasi-public corporations 24 is they tend to do their own thing, so your own 25 staff feels like they like to know occasionally</p> | <p>1 Q. And does it accord with your recollection that 2 Mr. Lane would have attended that meeting on April 3 9, 2010? 4 A. I don't know. I don't recall whether he did 5 or not. 6 Q. I'm going to ask you to take a look at what's been 7 marked as Defendants' Exhibit 512. Do you have 8 that in front of you? 9 A. Yes. 10 Q. Can you tell us what that document is? 11 A. It looks like, I don't know, is this an 12 e-mail? I can't tell if it's an e-mail or a memo. 13 Q. These are e-mails, I'll suggest to you. 14 A. From Jamia McDonald to Amy Kempe, Chris 15 DiFilippo, subject, this morning. 16 Q. Okay. Now, who is Amy Kempe? 17 A. Amy was a communications media person. 18 Q. Working in the office of the Governor? 19 A. Yes. 20 Q. And who is Chris DiFilippo? 21 A. She would have been administrative assistant 22 in the office. 23 Q. Of Governor, your office? 24 A. Yes. 25 Q. And Jamia McDonald was your deputy chief of staff?</p> |
| Page 82 | Page 84 |
| <p>1 what's going on. The communication necessarily 2 isn't always the best. So they might have just 3 wanted to be there. 4 Q. But I'm going to suggest to you that there are 5 somewhere in the neighborhood of 25 to 30 e-mails 6 that were either addressed to Mr. Hodgkin, Ms. 7 McDonald in which they received copies, the topic 8 of which was 38 Studios. Do you know why they 9 might have received that many e-mails concerning 10 this transaction? 11 A. No, I don't. I mean, you'd have to ask them. 12 You know, if you ask me -- 13 MR. WISTOW: If you don't know, you 14 don't know. 15 Q. I asked you. Do you know? 16 A. No. 17 MR. WISTOW: He just said I don't. 18 A. I don't know. 19 Q. If we go back to D-120, going to the second page, 20 it says, "Al, Keith knows you're going to be out 21 of town tomorrow, but wanted you to be aware of 22 the meeting. Steve, Keith would like you to 23 attend, if at all possible. Please let me know." 24 Did I read that correctly? 25 A. Uh-huh.</p> | <p>1 A. Yes. 2 Q. Let's go down to the second e-mail on that page, 3 which is Exhibit OOG 9525, do you see that? And 4 that's an e-mail from -- to Jamia McDonald from 5 Chris DiFilippo stating that Donna just told me 6 that Curt Schilling is doing a private meeting at 7 EDC with just the governor, Keith Andy. Tony is 8 coming in for 11:15. We'll bump Jeff Greer to 12 9 noon." Do you see that? 10 A. Uh-huh. 11 Q. Why would Jamia McDonald have been getting this 12 information regarding a private meeting you were 13 having with Curt Schilling? 14 MS. CONCANNON: Objection. 15 A. I have no idea. It looks to me like they 16 were having some scheduling issues with other 17 meetings in the office. 18 Q. Now, this -- let's stay with this e-mail again to 19 Jamia McDonald from Chris DiFilippo, 20 administrative assistant in your office dated 21 4-8-2010. It says, "Donna just told me that Curt 22 Schilling is doing a private meeting at EDC with 23 just the governor, Keith and Andy." Does that 24 refer to Andy Hodgkin? 25 MR. WISTOW: If you know.</p> |

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| <p style="text-align: right;">Page 85</p> <p>1 A. I presume but, you know, it's the only Andy I 2 know, but I presume so. 3 Q. Why would Mr. Hodgkin be called out attending a 4 private meeting between you and Mr. Schilling 5 concerning 38 Studios? 6 MS. CONCANNON: Objection. 7 A. You'd have to -- I don't recall. You know, 8 he may have asked me if he could sit in because he 9 wanted to -- you know, get up to date a little bit 10 in terms of what was going on, you know, that 11 would not have been unusual. 12 Q. Now, I've placed before you Plaintiff's Exhibit 13 46, which is a document bearing the Bates stamp 14 APS 1277 through and including APS 1283. Do you 15 see that, sir? 16 A. Yes, I do. 17 Q. Can you identify for the court and jury what that 18 is, please? 19 MR. WISTOW: What it appears to be. 20 A. Again, I can't tell e-mails from memos, so -- 21 it's a communication from Sharon Penta dated 22 Monday, April 5th, subject, it's a memo to the EDC 23 board, attached Stokes memo on board regarding 24 guarantee Kushner. "Good morning, attached please 25 find two documents from Keith Stokes. As always,</p> | <p style="text-align: right;">Page 87</p> <p>1 EDC board members together with what also appears 2 to be their executive assistants, attaches a memo 3 to the EDC board? 4 A. Yes, it's a memo to the EDC board from Keith 5 Stokes dated April 5th regarding the job guaranty 6 program, legislation approval with attached draft 7 being what looks to be the legislation that was 8 passed for the Job Guaranty Fund. 9 Q. Okay. And this if we go to the -- you were 10 getting this in your capacity as board member, 11 right? 12 A. Yes. 13 Q. And you would have received this, I take it? 14 A. Yes. I'm cc'd on it. So -- 15 Q. Well, actually, it's addressed to you if you go up 16 to the "To" line -- 17 A. As I said, I'm one of the -- 18 Q. -- recipients? 19 A. -- one of the recipients. 20 Q. Not only are you one of the recipients, but it 21 would appear that -- it's addressed directly to 22 you? 23 A. No. It's directed to all of the board 24 members of which I am one. 25 Q. Fair enough. I didn't mean to imply otherwise.</p> |
| <p style="text-align: right;">Page 86</p> <p>1 if you have any questions or concerns, please feel 2 free to contact Keith directly." So it looks like 3 a memo or an e-mail to all of the board members. 4 Q. I think earlier today you said that the only way 5 that you would have -- only way you would have 6 been getting any information regarding the 38 7 Studios transaction would have been at board 8 meetings; do you remember telling me that? 9 A. I didn't say exactly that, because there were 10 conversations. You know, Keith would tell me, 11 he's had discussions, and it looks good or 12 something like that. But any substantive review 13 of the transaction is what took place at the 14 board. 15 Q. Now this is dated April 5, 2010, I'm referring now 16 to Exhibit 46, right? 17 A. Yes. 18 Q. And that's four days after you received the April 19 1 e-mail from Stolzman and the letter of intent, 20 as well as a memorandum addressed directly to you, 21 correct? 22 A. Yes. 23 Q. And maybe you could just take a moment and look 24 through this. Does this document, which is an 25 e-mail that appears to be addressed to all of the</p> | <p style="text-align: right;">Page 88</p> <p>1 Again, this is addressed to you as well as all of 2 the other board members, right? 3 A. Correct. 4 MR. DeSISTO: When you say addressed 5 to the governor, where are you getting that from? 6 MR. HOLT: That is line one, two, 7 three down, far right-hand side. 8 THE WITNESS: It lists all the board 9 members, Marc, and I'm one of them. 10 MR. HOLT: Governor Donald Carcieri. 11 MR. LEDSHAM: But the e-mail address 12 isn't actually his e-mail address. 13 MR. HOLT: I'm going to get to that. 14 Q. This identifies you as a recipient, Governor 15 Donald Carcieri, and opens -- after that it has 16 mgartelman@gov.state.us, does it not? 17 A. That's my assistant. I didn't have e-mail. 18 MR. DOLAN: How liberating. 19 THE WITNESS: It's the best thing 20 ever. 21 Q. Who is Ms. Gartelman? 22 A. She was an administrative assistant. 23 Q. She was part of your staff? 24 A. Yes. 25 Q. So, you would have to rely on your staff to make</p> |

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| <p>1 sure you got e-mails that would have been relating 2 to 38 Studios? 3 A. And e-mails, yes. 4 Q. And any attachments to those e-mails, right? 5 A. Yes. 6 Q. Now, let's take a look at the flip side of Exhibit 7 46 which is page APS 1278, do you have that? 8 A. I've got 46. 9 MR. WISTOW: Just turn that page 10 over. That's what he's looking at, the left side. 11 THE WITNESS: 1278 APS. Okay. I'm 12 sorry. 13 Q. Yes. That is addressed to RIEDC board of 14 directors, all of them, right? 15 MR. WISTOW: Objection. 16 A. Yeah. 17 Q. Well, do you have any reason to believe that 18 when the -- 19 A. No, I'm presuming this -- you got it here 20 because this was the attachment that went to -- 21 all of this information here, it went to all of 22 these people. 23 Q. And that's something I guess Ms. Gartelman would 24 have brought to your attention as you told me 25 before, right?</p> | <p>1 there? 2 A. No. That was a draft letter of intent. 3 Q. Is there any reference to the draft letter of 4 intent? 5 A. No. 6 Q. Now, you indicated earlier today that -- I'll 7 withdraw that question. 8 THE WITNESS: Is that a first? 9 MR. WISTOW: No. Every once in a 10 while he listens to the question he asks and he 11 realizes what's going on. 12 Q. Now, let's compare the memorandum that's part of 13 the April 5 e-mail from Sharon Penta to the EDC 14 board with the memorandum that was addressed to 15 you by Mr. Stokes, and that's -- again we're going 16 to have to go back to Exhibit 354. Maybe in the 17 interest of time you could put the April 1, 2010 18 memorandum addressed to you, Governor Donald L. 19 Carcieri to Mr. Stokes and we're going to be 20 comparing that to the memorandum that went to the 21 entire board just four days later. Okay. Going 22 to the top of the April 1, 2010 memo addressed to 23 you, it states, "Governor, as you know, we have 24 been meeting with Curt Schilling and his company, 25 38 Studios, regarding their potential relocation</p> |
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| <p>1 A. Yes. 2 Q. Now, maybe you could just read APS Page 1278 which 3 is an attachment to the April 5, 2010 e-mail from 4 Ms. Penta to you and other board members. Just 5 take a moment and read it to yourself, please. 6 (PAUSE) 7 Q. Have you had an opportunity to read that, sir? 8 A. Yes. 9 Q. Now, maybe you could tell the court and jury 10 whether or not 38 Studios is mentioned anywhere in 11 this e-mail dated April 5, 2010 to the entire 12 board? 13 A. No, I don't see it mentioned anywhere. 14 Q. Okay. Well -- 15 THE WITNESS: Did I miss it? 16 MR. WISTOW: No, you didn't miss it. 17 Q. Is the fact that you had received a memorandum or 18 a memorandum was addressed to you and received by 19 you dated April 1 from Mr. Stokes referenced 20 anywhere in the April 5 memo to the board? 21 A. No. 22 Q. Well, how about the letter of intent that was 23 addressed to you or that was sent to your office 24 on April 1 by Mr. Stolzman, the letter of intent 25 we talked about, is that anywhere referenced</p> | <p>1 to and expansion in Rhode Island." Did I read 2 that correctly? 3 A. Yes. 4 Q. And I think a few questions back you indicated 5 that you were aware that Mr. Stokes had been 6 meeting with 38 Studios prior to April 1, 2010, 7 right? 8 A. Well, I assumed he was. I don't -- I'm not 9 aware of specific meetings, but when I came back 10 again from the -- you know, from the fund-raiser 11 at Curt Schilling's home, I passed along to Keith 12 that Schilling had a company called 38 Studios 13 that, you know, might be interested in some of our 14 programs and was growing. So I assumed following 15 that that he had discussions, but I'm not aware of 16 those discussions. 17 Q. Well, let's go to -- let's go to the April 5, 2010 18 e-mail from Mr. Stokes to the entire board; do you 19 have that in front of you? 20 A. Uh-huh. 21 Q. Does that reference anywhere that you had alerted 22 Mr. Stokes at some time shortly after March 6, 23 2010 of an opportunity with 38 Studios? Does that 24 April 5 memo say that? 25 A. No. My reading of this April 5 memo had</p> |

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| <p>1 nothing to do directly with 38 Studios. This was 2 the authorization for the Loan Guaranty Fund and 3 increasing the amount. I do remember discussions 4 about increasing the amount of the authorization 5 to potentially, you know, accommodate a larger 6 transaction, but we weren't -- that's it. 7 Q. So, no, to my question whether there's any 8 reference -- 9 A. No, there is no reference to 38 Studios. 10 MR. WISTOW: Asked and answered 11 multiple times. 12 A. This is about a Loan Guaranty Fund program 13 the legislature has authorized and alerting the 14 board to that. 15 Q. But the April 1 memo says, "As you know, we've 16 been meeting with Curt Schilling and his company," 17 but the April 5 memo doesn't reference any 18 meetings that Mr. Stokes may have been having with 19 Curt Schilling? 20 MR. WISTOW: He said that four 21 questions ago. 22 A. I said that earlier. 23 Q. Let's go to the -- further down there, it 24 references on the April 1 memo, the RPG phase of 25 the game has guaranteed --</p> | <p>1 production of both the RPG and the MMO phase of 2 the game." Did I read that correctly? 3 A. Yes. 4 Q. Now, does the memo to the full board, not just the 5 one you got, but to the full board, reference that 6 the company, meaning 38 Studios, needed \$75 7 million? 8 A. No. 9 Q. Who made the decision to withhold the facts laid 10 out in the e-mail addressed to you individually on 11 April 1, 2010 from the board at large in the April 12 5, 2010? 13 MR. WISTOW: Objection. 14 A. They were two completely different issues. 15 They're two completely different issues. One is a 16 Loan Guaranty Program that's being authorized by 17 the Legislature, okay, the amount of which was 18 subject to discussion and change. The other is 19 discussions that had been going on with 38 20 Studios. So, you know, at this point, this was 21 just to make the board aware that we had to take 22 some action, you know, once the Legislature did. 23 I think Keith was excited, we never had any kind 24 of Loan Guaranty Program, and so the legislature 25 had indicated a willingness to do that.</p> |
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| <p>1 THE WITNESS: Which one are you on? 2 Q. I'm sorry, Governor, I'm on the April 1, 2010 3 e-mail that was addressed specifically to you and 4 you alone by Mr. Stokes. Let's go down to the 5 fourth paragraph; do you see that? 6 A. Yes. 7 Q. And there's a reference to Electronic Arts make an 8 investment valued at \$50 million, does it not? 9 A. Yes. 10 Q. Now, is that anywhere referenced in the April 5 11 memorandum that was supplied to the entire board? 12 MR. WISTOW: We stipulate there is no 13 reference to anything to do with 38 Studios. 14 A. No. 15 MR. WISTOW: There's no question 16 about it. You can go down each sentence and ask 17 him and you're going to get the same answer. 18 Q. Now let's go down to the bottom paragraph 19 beginning with 38 Studios on the April 1, 2010 20 memo, it was addressed to you alone by Mr. Stokes. 21 Do you see that bottom paragraph? 22 A. Yes. 23 Q. Do you see the third line down to the right. "The 24 company needs approximately \$75 million to 25 complete the intellectual property development and</p> | <p>1 Q. Is it your testimony under oath that the topic 2 covered in the April 5, 2010 memorandum to the 3 entire board is unrelated to the facts set forth 4 in the April 1 memo? 5 A. No, what I said. 6 MR. WISTOW: Objection. 7 A. What I said is they're two completely 8 different memos, memorandum. Okay. One is just 9 informing the board about a Loan Guaranty Program 10 that the legislature was going to entertain and 11 hopefully approve. That's all that says. 12 Q. Let's go back to the e-mail from Mr. Stolzman 13 April 1, 2010 which was the covering e-mail to the 14 memorandum addressed to you by Stokes. Do you 15 have that in front of you? 16 THE WITNESS: Is that APS 2406? 17 MR. HOLT: 2403. 18 A. Okay. 19 Q. Beginning with, "Hi, Andy." Do you see that. It 20 says, "Keith asks that I forward to you the drafts 21 of the attached documents." Again, they're 22 referring to the memo addressed to you, the 23 Kushner as well as the letter of intent, right? 24 A. Yes. 25 Q. Okay. This goes on to say, quote, "They include a</p> |

1 draft memo from Keith to the governor that is a
2 very brief background and summary of the proposed
3 transaction in development of 38 Studios in Rhode
4 Island. A draft letter of intent between 38
5 Studios and the RIEDC further outlining some basic
6 terms and a draft Kushner authorizing RIEDC to
7 guarantee 38 Studios debt at the suggestion of
8 House Finance Chairman Costantino." Did I read
9 that correctly?
10 A. Yes.
11 Q. And the Kushner is attached to the April 5 e-mail
12 to the entire board, is it not?
13 A. Yeah. I don't know if it's the Kushner. I
14 haven't looked at it. But it's a draft of, you
15 know, an article that was going to be submitted to
16 the Legislature.
17 Q. Let's compare the article that was to be submitted
18 to the legislature that is attached or appended to
19 the April 1, 2010 e-mail, and let's compare it to
20 the draft Kushner amendment that was attached to
21 April 5, if you would, please.
22 A. Yeah. Okay, it's identical.
23 Q. It's an identical document. So, in Mr. Stolzman's
24 e-mail to your chief of staff appending the
25 documents -- appending documents, Mr. Stolzman is

1 to the 38 Studios transaction?
2 MR. WISTOW: I object to that.
3 MR. HOLT: Noted. You can answer.
4 MR. WISTOW: He never said that.
5 A. What I said is this was a memo informing the
6 board and putting forth the draft resolution that,
7 hoping that the Legislature would authorize a loan
8 guaranty fund of \$125 million, that's all I said.
9 Q. But as of April 5, 2010, you were aware, were you
10 not, that that very Kushner amendment
11 contemplating a \$125 million allocation, that
12 there were discussions being had between Stokes at
13 EDC and 38 Studios concerning an earmark of 75
14 million, right?
15 A. But there's a process, okay, beyond
16 discussions and somebody's outline of what might
17 be a good deal for the state, they believe, okay,
18 there's a whole process of approval and review by
19 the board. Outside consultants, as I said, again,
20 like Wells Fargo, came in, there was a lengthy
21 process that got to the point. So there was no
22 assurances that any deal was going to be done for
23 38 Studios at that point. I know I wasn't, and
24 I'm sure the board wasn't, hadn't even gone to the
25 board yet. So, all I'm saying is that was just an

1 saying that he's including a draft Kushner
2 authorizing the RIEDC to guarantee 38 Studios'
3 debt. There's a specific relationship between the
4 Kushner in the April 1 e-mail which is identical
5 to the April 5 e-mail and the 38 Studios
6 transaction, right?
7 MR. DeSISTO: Objection.
8 MR. WISTOW: Objection.
9 A. It speaks for itself.
10 Q. So, is it your testimony here under oath that as
11 of April --
12 MR. WISTOW: All his testimony is
13 under oath. Don't keep saying that. That really
14 is offensive. All his testimony is under oath.
15 MR. HOLT: Are you done?
16 MR. WISTOW: Yes. I'm done. That
17 really is offensive.
18 THE WITNESS: It's his technique.
19 MR. WISTOW: It's just offensive.
20 All his testimony is under oath, do you understand
21 that, Governor?
22 THE WITNESS: Yes I understand, very
23 clearly.
24 Q. Is it your testimony under oath today that the
25 subject of the April 5, 2010 e-mail was unrelated

1 authorization, or legislation to go to the
2 Legislature to, you know, create a program.
3 Q. So as of April 5, you would have had information
4 concerning the 38 Studios transaction including
5 the letter of intent, including --
6 A. It was a draft letter of intent.
7 Q. Let's call it a draft --
8 A. And I had a summary from Keith Stokes of the
9 highlights what he thought would be a good deal
10 for the state and something we should consider.
11 Q. But as of April 5, that information was not being
12 shared with the entire board, was it?
13 A. It wasn't -- hadn't gotten to the board, of
14 being vetted by the board. The board would not
15 have been necessarily concerned about this
16 legislation.
17 Q. I just want to make sure I understand this. My
18 question to you is a very simple one. As of April
19 5, 2010, you had information which included a
20 draft letter of intent relating to a possible \$75
21 million loan by EDC to 38 Studios, you had a
22 briefing memorandum as to the possible terms of
23 such a deal, but as of April 5, you had not shared
24 that with the rest of the board? That calls for a
25 yes or no answer.

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| <p>1 MR. DeSISTO: I object on that.</p> <p>2 A. It hadn't gotten to the board yet.</p> <p>3 Q. Did you provide --</p> <p>4 A. It had not gotten -- how could I make it any</p> <p>5 clearer? That there's a process, and at some</p> <p>6 point when the staff had done a lot of work, this</p> <p>7 is their opinion, by the way, and the work they</p> <p>8 had done, but nothing has been approved, nothing</p> <p>9 has even gone before the board yet. So then that</p> <p>10 process commenced. Along with that process</p> <p>11 simultaneously the Legislature approved</p> <p>12 legislation creating a Loan Guaranty Fund.</p> <p>13 Q. I move to strike the answer. Sir, can we agree</p> <p>14 that at least as of April 5, 2010, you had in your</p> <p>15 possession in your office a draft letter of</p> <p>16 intent, but that the rest of the board did not</p> <p>17 have that draft letter of intent as of April 5?</p> <p>18 A. I don't remember the draft letter of intent,</p> <p>19 I said that. Okay. You know, the memo from Keith</p> <p>20 is, you know, pretty clear. So I had that, but</p> <p>21 that was just informing me of some discussions</p> <p>22 that had taken place. As far as I'm concerned,</p> <p>23 then, you know, he was looking for did I think</p> <p>24 that that was something that should come to the</p> <p>25 board and worth pursuing, and I said yes.</p> | <p>1 don't know that. You'll have to ask him that,</p> <p>2 whether he got that.</p> <p>3 Q. He's already indicated that's the case.</p> <p>4 THE WITNESS: Okay.</p> <p>5 MR. WISTOW: You're not going to ask</p> <p>6 him why it wasn't sent if he got it? Mr. Holt?</p> <p>7 THE WITNESS: I'll volunteer.</p> <p>8 Q. Sure, why didn't you --</p> <p>9 MR. WISTOW: Well, why don't you ask</p> <p>10 a question. Let him ask the question.</p> <p>11 Q. Did you make a decision not to provide the draft</p> <p>12 letter of intent to the board as of April 5?</p> <p>13 A. No. We made a decision to take the whole</p> <p>14 matter of 38 Studios to the board in a lengthy</p> <p>15 deliberative process, so we did. I'm not going to</p> <p>16 take a letter of intent or some work that's been</p> <p>17 done by the staff and it's a done deal. Of course</p> <p>18 not. All this indicated to me is, all right,</p> <p>19 let's start the process with the board, and they</p> <p>20 went through a very deliberative process. I'm</p> <p>21 sure they've all testified to that fact and came</p> <p>22 to the conclusion they did.</p> <p>23 Q. But we agree, at the very least, there was</p> <p>24 information contained in the April 1 memorandum</p> <p>25 from Stokes to you detailing specific financial</p> |
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| <p>1 MR. WISTOW: Why don't you ask him</p> <p>2 why he didn't send it on to the board, that's what</p> <p>3 you're getting at.</p> <p>4 Q. Can we agree and stipulate that the governor did</p> <p>5 not send the draft letter of intent along to the</p> <p>6 board?</p> <p>7 MR. DeSISTO: I'm not agreeing to</p> <p>8 that.</p> <p>9 MR. WISTOW: I'm not stipulating to</p> <p>10 anything. Why don't you ask him if he didn't send</p> <p>11 it, why didn't he send it. That's what he's</p> <p>12 trying to explain to you.</p> <p>13 Q. Well, I think one thing is clear, Governor, that</p> <p>14 at least as of April 5, 2010, the board did not</p> <p>15 have in its possession the draft letter of intent</p> <p>16 that was attached to the April 1, 2010 e-mail to</p> <p>17 your chief of staff, can we agree on that, at</p> <p>18 least?</p> <p>19 A. Yes, we can agree on that. To the best of my</p> <p>20 knowledge, I think that's correct.</p> <p>21 MR. WISTOW: Do you want to ask him</p> <p>22 why?</p> <p>23 Q. But that had been sent to your chief of staff on</p> <p>24 April 1?</p> <p>25 A. That's what you, you know, are saying, I</p> | <p>1 terms of a potential loan to 38 Studios that was</p> <p>2 not included in any materials provided to the</p> <p>3 board as of April 5, 2010?</p> <p>4 A. Not April 5, but all of that material came</p> <p>5 out subsequently in presentations to the full</p> <p>6 board. All of this was vetted in great detail,</p> <p>7 with outside experts, consultants testing it all</p> <p>8 and giving us opinions. So it all came to the</p> <p>9 board, you know, for their decision, eventually.</p> <p>10 Q. But nobody informed the board of the financial</p> <p>11 terms that were in the memo that you had gotten</p> <p>12 from Stokes as of April 5, right?</p> <p>13 MR. WISTOW: As far as he knows.</p> <p>14 A. As far as I know, not that I'm aware of.</p> <p>15 Q. Now as part of the -- as part of the process that</p> <p>16 you had been referring to involving the board and</p> <p>17 making sure that they got information, would that</p> <p>18 have included meetings of the board of directors</p> <p>19 to discuss such things as the Kushner and the 38</p> <p>20 Studios loan?</p> <p>21 A. Yeah, generally I would say yes. There were</p> <p>22 board meetings specifically dedicated, to my</p> <p>23 recollection to, you know, confidential meetings</p> <p>24 that were dedicated entirely to the 38 Studios</p> <p>25 transaction that involved outside consultants</p> |

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| <p>1 making presentations about the industry and about 2 38 Studios. 3 Q. Take a look at what has previously been marked as 4 Exhibit D-82. I put that before you, sir. Do you 5 have what has been marked as Exhibit D-82 in front 6 of you, sir? 7 A. Yes, I do. 8 Q. Now, this appears to be the meeting minutes of a 9 board meeting of the EDC board dated May 24, 2010; 10 do you see that? 11 A. Yes. 12 Q. And let's go to Page 4, numbered Page 4, Bates 13 stamp BR 62408; do you have that? 14 A. Yes. 15 Q. And it has in all caps, For Summary of RIEDC 16 Capital Programs; do you see that? 17 A. Yes. 18 Q. Actually, before we get into that, maybe we could 19 just take a look at the first page of D-82, 20 Governor. Can you take a look at the first page. 21 THE WITNESS: Sorry? 22 Q. Do you see that, the May 24 meeting minutes? 23 A. Yes. 24 Q. Now, it states that, "Governor Carcieri presided 25 over the meeting and Attorney Robert Stolzman</p> | <p>1 Studios loan during that seven-week period, as for 2 as you know? 3 A. When you say process, if there had been 4 discussions going on between EDC staff and 38 5 Studios, I do not know. Okay. It had not yet 6 gone to the full board for consideration yet. 7 Q. Now, does -- do these minutes, Exhibit D-82, 8 reference the draft letter of intent we've been 9 talking about? 10 A. No. 11 Q. Do these minutes mention the specific facts that 12 were called out in the memorandum that you 13 received from Mr. Stokes dated April 1, 2010? 14 A. No. I do remember this presentation. I 15 don't remember the exhibits, but this was a 16 summary of all the different capital programs that 17 EDC had, all right, and a review had been done of 18 that and that's where the Loan Guaranty Program 19 grew out of the fact that that was a deficiency. 20 So, this was a presentation about, you know, the 21 arrow we had in our quiver for economic 22 development. 23 Q. But again, I don't really mean to be repeating 24 this unnecessarily. Certainly, as early as April 25 1, 2010 there were discussions between EDC</p> |
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| <p>1 acted as secretary," right? 2 A. Yes. 3 Q. So you would have attended that meeting? 4 A. Yes. 5 Q. And Mr. Stolzman, the drafter of the draft letter 6 of intent that was sent to your office on April 1, 7 he was also in attendance, right? 8 A. Yes. 9 Q. Now let's go back to Page 4, which is BR 62408, 10 open to that page, please? 11 A. Yes. 12 Q. Now, does the section number 6, For Summary of 13 RIEDC Capital Programs, do you see that? 14 A. Uh-huh -- yes. 15 Q. Does that specifically mention by name 38 Studios? 16 MR. WISTOW: We'll stipulate it 17 doesn't. 18 Q. Does it? 19 A. No. 20 Q. Now, May 24 is approximately seven weeks after you 21 would have received that e-mail April 1, 2010 22 e-mail with the draft letter of intent in the 23 memorandum, right? 24 A. Yes. 25 Q. So had the process been ongoing relative to the 38</p> | <p>1 staffers, at least involving EDC counsel, 2 Mr. Stolzman, and 38 Studios specifically calling 3 out a potential loan of \$75 million coming out of 4 the 125 million Loan guaranty Program, right? 5 MS. CONCANNON: Objection. 6 MR. WISTOW: Asked and answered I 7 don't know how many times. 8 A. Yeah, I've said that. There were obviously 9 conversations going on with the staff, but none of 10 that -- let me say once again, none of that had 11 come to the board for any process of due diligence 12 and vetting and review, and still hadn't at this 13 point, as I recall. 14 Q. But you were aware -- 15 MR. WISTOW: At this point being May 16 24? 17 THE WITNESS: May 24th. 18 Q. But you certainly knew that that process was going 19 on, right? 20 A. I knew there were discussions going on. 21 There are always discussions going on. Some come 22 to fruition, some fall apart. This is what you do 23 when you're doing economic development and 24 discussions with companies. The vast majority of 25 them don't come to fruition.</p> |

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| <p>1 MR. WISTOW: Are we going to a new 2 exhibit? 3 Q. Prior to the May 24 board meeting which the -- the 4 minutes of which have been identified and you've 5 looked at, D-82, were you briefed by Mr. Stokes 6 concerning the terms of the 38 Studios deal prior 7 to the May 24 meeting? 8 A. I don't recall. Okay. There may have been 9 updates in terms of their conversations, but 10 because before we take it to the board, you know, 11 we're going to make certain this is something that 12 really could happen or not. 13 Q. I'm going to ask you to take a look at what has 14 been previously marked -- 15 MR. WISTOW: I suggest we take a 16 break. 17 MR. HOLT: I've got about ten 18 minutes. We can break after this exhibit. 19 MR. WISTOW: All right. Okay. 20 Q. Governor, I'm going ask you to take a look at 21 what's been marked as Exhibit D-122, and that is a 22 document BR 34470 through and including BR 34473. 23 Do you have that in front of you? 24 A. Yes. 25 Q. And this at the very top is an e-mail from Keith</p> | <p>1 Michael Corso refers to Mike Corso who was the 2 financial advisor to 38 Studios, right? 3 A. Yes. 4 MR. WISTOW: Hold it. Let the record 5 reflect that the Governor nor anybody in his 6 office is copied on any of these things, any of 7 them. 8 MR. HOLT: That's fine. We'll note 9 that. 10 THE WITNESS: I was just going to 11 say that thank you. 12 MR. WISTOW: It's kind of important 13 to note that. 14 MR. HOLT: It's noted. Do you want 15 to note it twice? 16 MR. WISTOW: Unlike you going over 17 stuff time and time and time again. I'm limited 18 to one? 19 Q. So this e-mail that is addressed from Stolzman to 20 Stokes, that's talking about, "Timing, pushing the 21 special board meeting to June 9 is problematic." 22 Do you see that? 23 A. Yes. 24 Q. Going back to your answer a couple of questions 25 back, you were -- you mentioned that you were at</p> |
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| <p>1 Stokes to Mike Saul at EDC with a copy to EDC's 2 counsel, the drafter of the draft letter of 3 intent, as well as Fred Hashway, and the subject 4 is RIEDC 38 Studios, right? 5 A. Yes. 6 Q. And this is dated May 12, 2010, right? 7 A. Yes. 8 Q. And that's 12 days before the May 24 board 9 meeting, right? 10 A. Yes. 11 Q. And this states, "Just finished speaking to Gov, 12 re: 38 Studios." What's your understanding of 13 what that refers to? 14 A. I don't recall, but my presumption is we were 15 setting a schedule for now to present this and 16 bring this whole thing before the full board, 17 okay, because board schedule and time frames, et 18 cetera, needed to be taken into account. 19 Q. So this e-mail, again, is nearly two weeks before 20 the May 24 board meeting, right, 12 days? 21 A. Yes. 22 Q. And it has attached to it another e-mail from 23 Stolzman to Stokes. It says, "Hi, Keith, Mike and 24 Fred. I just got off the phone with Michael 25 Corso, and then a separate call with Tom Z."</p> | <p>1 this point in time, at least by May 12, there was 2 consideration making sure or planning to get the 3 actual 38 Studios transaction before the board, 4 right? 5 A. Yes. 6 Q. Okay. And that would have been something you 7 would have been discussing with Mr. Stokes on or 8 about May 12, 2010, right? 9 A. That's what he's indicating here. 10 Q. Do you have any reason to believe that's not 11 accurate? 12 A. No. 13 Q. Now, let's go to, in closing before the lunch 14 break here, I'm going to have this marked as 15 Exhibit 807. 16 (DEFENDANTS' EXHIBIT 807 17 MARKED FOR IDENTIFICATION) 18 Q. I'm going to suggest that 807 is now identical to 19 what is D-82 except it has the slide dec. attached 20 to it? 21 A. Okay. 22 Q. And again, in the -- if we go to the, let's take a 23 look again at the Page 4 of the actual board 24 meeting minutes themselves. Under that summary of 25 RIEDC Capital Programs?</p> |

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1 A. Yes.
2 Q. So, again, notwithstanding the fact that you would
3 have met with Mr. Saul in and around May 12,
4 approximately 12 days before the May 24 meeting --
5 A. Mr. Saul? Stokes?
6 Q. I'm sorry, Mr. Saul to discuss the possible timing
7 of the presentation?
8 MR. WISTOW: You mean Stokes.
9 A. You mean Stokes.
10 Q. Mr. Stokes. Sorry, thank you. Okay. So the
11 summary of RIEDC Capital Program section on Page 4
12 of the May 24, 2010 meeting minutes you had had a
13 meeting 12 days before discussing specifically
14 bringing the EDC transaction to the board's
15 attention with --
16 MR. WISTOW: 38 Studios.
17 Q. 38 Studios deal with Mr. Stokes?
18 MR. WISTOW: Are you getting
19 hypoglycemic?
20 MR. HOLT: Slightly. It's a senior
21 moment, maybe. I hope it's only hypoglycemia.
22 THE WITNESS: I'm trying not to have
23 too many of those.
24 A. It was beginning to ripen, the discussions,
25 enough that it needed to get before the board and

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1 that there were conversations, I don't remember
2 them, okay, about we've got a schedule and we're
3 going to have to allocate, you know, a lot of time
4 on the board's part to review this. This is a
5 complex transaction. That was in the same time
6 frame but I don't -- they weren't ready yet, would
7 be my presumption, to go to the board on the 24th.
8 Q. But you had had that conversation with EDC --
9 A. I don't know.
10 Q. -- on May 12th according to that e-mail we just
11 looked at?
12 A. We were, I think having a conversation
13 according to that, about scheduling, you know,
14 board meetings to review this transaction.
15 Q. Now, let's go to Exhibit 807, please, the slide
16 dec. there. I'm going to ask you to go in to what
17 is the Bates stamp APS 1459; do you see that?
18 A. 145 --
19 MR. HOLT: 9.
20 THE WITNESS: Why am I missing it
21 here?
22 Q. Leading RIEDC Finance Programs.
23 MR. WISTOW: Take mine.
24 A. I got it. I've got to find the right one.
25 Okay. Yup.

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1 Q. 1459, do you have that?
2 A. Yes, I do.
3 Q. Now that's talking about the header RIEDC Finance
4 Programs, Next Steps, right?
5 A. Yes.
6 Q. And that is part of the slide dec. presentation
7 that was being made by Mike Saul to the board at
8 the EDC on May 4, 2010, right?
9 A. Yes.
10 Q. Now in this May 24 slide dec. presentation on Page
11 1459 under caption RIEDC Finance Programs, Next
12 Steps, is there any mention of 38 Studios?
13 A. No.
14 MR. HOLT: Break for lunch.
15 MR. WISTOW: I just want to put on
16 the record when I ask the court to take judicial
17 notice that the Job Creation Guaranty Program
18 wasn't even passed until June 11th, it didn't
19 become law.
20 MR. HOLT: We can take notice of
21 that. It was mentioned before in other slide
22 decs.
23 THE VIDEOGRAPHER: We're going off
24 the record, that is the end of Disk 2.
25 (OFF THE RECORD)

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1 (LUNCH RECESS 1:00 TO 1:40 P.M.)
2 THE VIDEOGRAPHER: Back on the
3 record. This is the beginning of Disk Number 3.
4 Q. Governor Carcieri, before we broke we were talking
5 about Exhibit 807 which is the slide dec. and
6 minutes from the May 24 meeting?
7 A. Yes.
8 Q. Now, are you aware that Stephen Lane's deposition
9 has been taken in this case?
10 A. No, I wasn't.
11 Q. Are you aware that Mr. Lane testified that he had
12 attended a, what he referred to as a pitch
13 meeting, and I believe that this is the meeting
14 that we're talking about on April 9, at the EDC
15 headquarters?
16 MR. WISTOW: Objection.
17 Q. Do you recall him being there?
18 A. No. I don't recall that meeting, I recall
19 suggesting that Steve, you know, he's more
20 knowledgeable than a lot of the board members
21 about digital media, et cetera, and so I remember
22 suggesting to Keith that, you know, it might be
23 helpful to have Steve's input, but I don't recall
24 the meetings, Tom.
25 Q. Do you recall approximately when you might have

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| <p>1 suggested Steve be brought into the loop? 2 A. No, I don't, really. 3 Q. Would it be somewhere before May 24? 4 A. Again, I don't -- I don't recall at all. 5 Q. Okay. Are you aware that Mr. Lane testified that 6 he actually had gone on a site visit at the 7 Maynard headquarters of 38 Studios some time in 8 May of 2010? 9 A. I don't recall that but, you know, if that's 10 what he said, he obviously did. 11 Q. Did you ever have any conversations, and let's try 12 to start at the May 24, 2010 board meeting as a 13 time reference here, did you have any 14 conversations with any individual board members 15 regarding the \$75 million loan that was being 16 contemplated in that letter of intent that you had 17 prior to the May 24, 2010 board meeting at large? 18 A. You know, again, I don't recall. You know, 19 Al Verrecchia as you indicated was vice chair, I 20 don't whether he was sort of aware of -- I think 21 there was a sensitivity, as I think back, too, at 22 the time, Tom, not to get ahead of a time frame 23 because the guaranty fund hadn't even been 24 approved. I don't think that was approved until 25 the end of May and early June when I signed this.</p> | <p>1 A. Roughly. 2 Q. And you would have signed that into law obviously 3 under the constitutional arrangement in the State 4 of Rhode Island, right? 5 A. Right. 6 Q. And when you signed that Jobs Guaranty Program 7 into law, you knew that of the \$125 million 8 involved in that program, \$75 million was being 9 contemplated as being loaned to 38 Studios, at 10 least as of June 11th, 2010, right? 11 A. Yes. That's -- Keith had indicated that, 12 that was the ballpark range of what their need 13 would be. 14 Q. And would you have known that as early as April 1, 15 2010 per the briefing e-mail you told -- briefing 16 memorandum you told me about earlier? 17 A. Yes. 18 Q. Okay. Now, if we could just go back, just very 19 briefly to Exhibit 807, and returning to that 20 page, APS 1459 with the caption RIEDC Finance 21 Programs, Next Steps at the top. Do you see that? 22 Now, when this slide dec. was being presented by 23 Mr. Saul with the reference to the passage of the 24 \$125 million guaranty program, did you speak up at 25 all and say, by the way, we are considering \$75</p> |
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| <p>1 So we didn't have a program, Number 1. Number 2, 2 given, you know, Schilling and the name, et 3 cetera, we didn't want a whole lot of, a whole lot 4 of speculation about something that hadn't even 5 gotten to the point of being vetted thoroughly. 6 Now as to whether Steve Lane and, you know, maybe 7 Al were aware of it, obviously you're saying Steve 8 went to visit it. So he clearly was, whether -- I 9 don't think there were many, but there might have 10 been some. 11 Q. Well, how did you go about selecting Mr. Lane to 12 be, you know, sort of let in on the transaction 13 before the rest of the board? 14 A. I didn't say I selected him. 15 MR. WISTOW: Objection. 16 A. What I said is it's helpful to have somebody, 17 you know, at the board level who knows something 18 about this to help do a little bit more legwork 19 and be of assistance to Keith and the team. 20 Q. Now, Mr. Wistow before the break pointed out that 21 the Job Creation Guaranty Program was I guess 22 signed into law on June 11, 2010 -- 23 MR. WISTOW: I believe that's right. 24 Q. -- does that roughly accord with your 25 recollection?</p> | <p>1 million of that being earmarked for 38 Studios? 2 A. No, I don't recall doing that. There was a 3 whole bunch of things that we were trying to 4 modernize, other programs we were -- the IRBA 5 financing, as they call it, increasing the limits. 6 So there's a series of things, and this was just 7 one of the things -- one of the arrows in the 8 quiver, but I don't believe -- 9 MR. WISTOW: Let him finish. 10 A. I don't believe I indicated that this hadn't 11 been approved, by the way, at this point. Right. 12 Am I correct, this is dated May 24th? 13 Q. 18 days later you signed the Job Creation Guaranty 14 Program into effect. 15 A. The General Assembly had not passed the 16 legislation on May 24th is my point. 17 MR. HOLT: Yes. 18 A. So they passed it later on, in which case I 19 signed it, and then now that we had legislation in 20 place that could accommodate -- we started the 21 process of scheduling board meetings to go through 22 the whole presentation, including the outside 23 consultants and everything that I've discussed. 24 Q. But let's focus our attention on Item Number 1, on 25 that page, RIEDC Finance programs. That's</p> |

1 specifically referring to the \$125 million Job
2 Creation Guaranty Program that you signed into law
3 approximately 18 days later?
4 A. Correct.
5 Q. My question to you is when there was reference to
6 the Job Creation Guaranty Program, you knew as you
7 sat there through this meeting that \$75 million of
8 the contemplated \$125 million was potentially
9 going to be a loan to 38 Studios. My question is
10 a simple one --
11 A. Potentially.
12 Q. But did you ever say to the board, by the way, in
13 respect to this particular program, I think you
14 might -- you should be aware that we're in
15 discussions, and we have draft letter of intent to
16 allocate 75 million of the 125 million?
17 A. No, no. That's not the way you do it.
18 Q. May I finish --
19 A. Sure.
20 Q. -- of the 75 of the 125 million to a single
21 company, 38 Studios?
22 A. No, because we weren't at that stage. I
23 don't know how many times I have to say it. The
24 staff can do work and put some things together,
25 which they did, and there were a lot of

1 Q. Were you aware of any other draft letters of
2 intent that had been prepared by EDC counsel with
3 respect to any other possible program that would
4 be funded under the \$125 million Job Creation
5 Guaranty Program, at least as of May 24?
6 A. Not at that point that I'm aware of.
7 Q. So, we can agree the only one, really, was the 75
8 million deal for EDC, right, in all fairness?
9 A. The only discussion, but say it again, there
10 was nothing agreed, nothing approved. The process
11 had not even begun at the board to ascertain the
12 board's approval and go through all the process of
13 due diligence, which was extensive. That's what
14 transpired following the Legislature's approval of
15 this program. Then we scheduled subsequent board
16 meetings to review this whole transaction with
17 lots of outside input.
18 Q. Did Mr. Lane speak up and say, oh, by the way, I
19 have attended two meetings with representatives
20 from 38 Studios?
21 A. I don't remember that.
22 Q. Do you remember if he spoke up and said, oh, by
23 the way, I've actually gone out to the 38
24 Studios --
25 A. No, as I said.

1 discussions back and forth. But until we have a
2 program, and then we go through a process with the
3 board -- by the way, at this stage, I had no idea
4 whether I was going to be in favor of this deal.
5 All right. So we went through a process with all
6 the board members using outside consultants as
7 I've, you know, said many times, and at the end of
8 that process, it was the majority, with only one
9 exception, that this was a transaction that we
10 should pursue.
11 Q. Okay. Did you not feel as though you had a duty
12 of candor with your fellow board members to reveal
13 information that you knew about the 38 Studios
14 deal in connection with specifically \$125 million
15 job creation program, you just didn't feel you
16 were required to do that?
17 A. No.
18 MR. DeSISTO: Objection.
19 A. No --
20 MR. WISTOW: Wait, he's still
21 speaking, Mr. Holt.
22 A. It could have been a job development guaranty
23 program for lots of different uses if we chose not
24 to do 38 Studios, and there was no -- there was no
25 guarantee that that deal was going to happen.

1 Q. -- facility -- 38 Studios facility in Maynard,
2 Massachusetts, to discuss a possibility of a \$75
3 million loan; do you recall him saying that?
4 A. No.
5 Q. Would you have expected Mr. Lane as a board member
6 of the EDC when the topic of the Job Creation
7 Guaranty Program came up, that he might have
8 spoken up, even in executive session, let's say,
9 and said, oh, by the way, I think as a board
10 member I owe a duty of candor to my other board
11 members to let you know I have been personally
12 meeting with 38 Studios, the topic of which is a
13 \$75 million allocation of the \$125 million under
14 the Job Creation Guaranty Program?
15 MR. WISTOW: Objection.
16 MR. DeSISTO: Objection.
17 A. No. There was going to be a process, and
18 then there would be ample opportunity in the
19 course of the board meetings, two of which were
20 devoted, they were confidential, two of which were
21 devoted entirely to the 38 Studios transaction, if
22 memory serves me, a couple hours each, and there
23 was ample opportunity that I was aware, you know,
24 that Steve and any of the board members at that
25 point had.

1 Q. So, you say that there were various meetings to
2 discuss the 38 Studios transaction, right?
3 MR. WISTOW: Talking about board
4 meetings.
5 A. Board meetings, yes.
6 Q. And that would have been board meetings after May
7 24, correct?
8 A. Yes. I think there was one in May and --
9 maybe two in May and a couple of July, but I don't
10 remember the exact dates.
11 Q. Do you recall that there was a special meeting
12 called on July 14th, 2010 to discuss the loan of
13 \$75 million to EDC?
14 A. No. But there were special meetings, exact
15 dates, I don't recall.
16 Q. Do you recall that Rosemary Booth Gallogly
17 prepared a memorandum raising serious questions
18 she had about the 38 Studios transaction addressed
19 to you in and around July 14, 2010?
20 A. Yes.
21 Q. And the meeting I believe was on July 15, the
22 special meeting?
23 A. I'll take you at your word. I just don't
24 recall.
25 Q. You have a memory of Ms. Gallogly preparing a

1 A. No. What I said is Rosemary Gallogly at that
2 time was director of administration.
3 Q. And she was also acting director of revenue,
4 right?
5 A. Right.
6 Q. And she had been budget officer for the State of
7 Rhode Island?
8 A. But she had no role with EDC in terms of
9 official responsibility.
10 Q. But you asked for her thoughts regarding the 38
11 Studios transaction?
12 A. Yes. Yes.
13 Q. And she had been the budget officer for the State
14 of Rhode Island, correct --
15 A. Yes.
16 Q. -- at one point. In fact, she had more experience
17 in public finance at the State of Rhode Island
18 level than you would have had, at least as of July
19 2010?
20 A. Yes.
21 Q. And in response to your requesting her opinion as
22 to the 38 Studios transaction, she prepared a
23 memorandum, right?
24 A. She prepared a memorandum to me, yes.
25 Q. And you would have read that memorandum, of

1 memorandum prior to that meeting, correct?
2 A. Yes. I asked Rose for her thoughts on the 38
3 Studios. As I said earlier, I had and have a lot
4 of respect and admiration for her. Now, she had
5 no involvement, had no knowledge whatsoever and
6 was not a part of any of the presentations, all
7 right, was not in any official role whatsoever to
8 do with EDC. So -- but I asked her for her
9 personal view because I respected her judgment,
10 didn't always agree, and I didn't -- or I felt
11 that the concerns she raised were all concerns
12 that came out in the course of the due diligence
13 by the board, and that they were addressed, and we
14 felt mitigated significantly enough to go ahead
15 with the transaction.
16 Q. Okay. Did you ever provide Ms. Gallogly's
17 memorandum to the board?
18 A. I don't recall, but I wouldn't necessarily
19 have because as I said, as I remember it, you
20 know, most of the issues she raised were issues
21 that already were in the process or even being
22 discussed or had been discussed by the board.
23 Q. Now, you say Ms. Gallogly had not been involved
24 with the various presentations. What specific
25 presentations do you have in mind?

1 course?
2 A. Yes.
3 Q. And you made a decision not to provide that to the
4 board, correct?
5 MR. WISTOW: Objection.
6 A. I just said I did, and because I felt most
7 all of the issues she was raising were issues that
8 had already been raised or would have been raised
9 in the course of the board meeting.
10 Q. You said I did. You said -- I think there's some
11 confusion. Can you we agree that you decided not
12 to provide Ms. Gallogly's memorandum to the board
13 prior to the final vote on the EDC loan, right?
14 A. I'm not sure it was that straightforward. I
15 just -- I didn't think that it was necessary to
16 bring it to the board because I was asking for her
17 personal opinion.
18 MR. WISTOW: Do you want to show him
19 the memo?
20 Q. And you made that decision, did you?
21 MR. WISTOW: Objection.
22 A. Yes, it would have been my -- my opportunity
23 to provide that information to the board.
24 Q. Okay. And you declined to do so, right?
25 MR. WISTOW: Objection.

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|--|--|
| <p>1 MR. DeSISTO: Objection.</p> <p>2 A. I said it wasn't relevant, I didn't feel.</p> <p>3 Q. Now, as of May 24, 2010, no specific presentations</p> <p>4 relating to 38 Studios had been made to the board</p> <p>5 at large, right?</p> <p>6 A. Correct.</p> <p>7 Q. And the first presentation specifically relating</p> <p>8 to the board was made by Mr. Saul on June 9, 2010,</p> <p>9 right?</p> <p>10 A. I don't know the date but --</p> <p>11 MR. WISTOW: Do you want to show him</p> <p>12 the minutes.</p> <p>13 A. If that's what you say.</p> <p>14 Q. Now, why did you ask for Ms. Gallogly's opinion as</p> <p>15 to the merits of the 38 Studios transaction?</p> <p>16 MR. WISTOW: Asked and answered.</p> <p>17 A. I think I said that in passing, I think it</p> <p>18 was actually another meeting, if I recall, and at</p> <p>19 the end of the meeting, I said, Rose, well, what</p> <p>20 do you think about 38 Studios? And, you know, she</p> <p>21 gave me her response.</p> <p>22 Q. I'm going to ask you, Governor, to take a look at</p> <p>23 what has been marked as Exhibit 357, and this on</p> <p>24 its face is an e-mail from Michael Saul addressed</p> <p>25 to Andrew Hodgkin, your chief of staff, Jamia</p> | <p>1 back?</p> <p>2 MR. HOLT: No. Actually it's the</p> <p>3 very first page, behind the very first page. Do</p> <p>4 you see that?</p> <p>5 THE WITNESS: Yes, it's a title</p> <p>6 page.</p> <p>7 Q. Now let's go back to the e-mail itself. That's an</p> <p>8 e-mail from Mike Saul to Andy Hodgkin and Jamia</p> <p>9 McDonald, Keith Stokes saying, "This is 95 percent</p> <p>10 complete." Do you see that?</p> <p>11 A. Uh-huh.</p> <p>12 Q. This is a draft being sent to your chief of staff</p> <p>13 and deputy chief of staff; is that right?</p> <p>14 A. Yes. Yes.</p> <p>15 Q. That was before the actual presentation was being</p> <p>16 made, right?</p> <p>17 A. Yes.</p> <p>18 Q. Now, I'm going to ask you to just, if you could,</p> <p>19 just leaf through the actual draft slide dec.</p> <p>20 which is the subject of this e-mail, which is</p> <p>21 Bates stamped OOG 4037 through and including OOG</p> <p>22 4053.</p> <p>23 (PAUSE)</p> <p>24 Q. Have you had an opportunity to look through that?</p> <p>25 A. I'm just finishing it here. Okay.</p> |
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| <p>1 McDonald, your deputy chief of staff, and Keith</p> <p>2 Stokes, right?</p> <p>3 A. Yes.</p> <p>4 Q. And it has attached to it a draft slide dec. which</p> <p>5 was to be presented to the board, right?</p> <p>6 A. I'm trying to read -- yes, I assume that's</p> <p>7 what this is. It says 38 Studios executive</p> <p>8 session presentation, yes.</p> <p>9 Q. Now, when I deposed Mr. Hodgkin, he testified as</p> <p>10 follows, quote, "That I would have made sure he</p> <p>11 would have had it." And he was referring to this</p> <p>12 document, Exhibit 357. Would you have gotten a</p> <p>13 copy of this?</p> <p>14 MR. LEDSHAM: Objection.</p> <p>15 A. I don't recall. It's very possible if Andy</p> <p>16 said he sent it, then it's very possible. This</p> <p>17 was destined for the board.</p> <p>18 Q. Do you have any reason to believe that Mr. Hodgkin</p> <p>19 was mistaken when he said we have made sure that</p> <p>20 you had actually gotten this Exhibit 357?</p> <p>21 A. No.</p> <p>22 Q. Again, this has appended to it a slide</p> <p>23 presentation, which in its first page has</p> <p>24 Executive Session Briefing, do you see that?</p> <p>25 THE WITNESS: Where is it, at the</p> | <p>1 Q. Now, would you have reviewed this slide dec.</p> <p>2 before it being presented to the board meeting?</p> <p>3 A. You know, I may have. I don't remember</p> <p>4 again, this is, you know, four years ago, but I</p> <p>5 may have. If they sent it to look at, you know,</p> <p>6 sometimes they would send me something to say, is</p> <p>7 there anything else you think of that we haven't</p> <p>8 covered or we should add or detract or whatever.</p> <p>9 Q. Now, this draft does not show any copies being</p> <p>10 sent to any other board members besides -- at all,</p> <p>11 but it doesn't show any reference to --</p> <p>12 A. No. This was the preparation for the board</p> <p>13 meeting. This was the preparation, 95 percent</p> <p>14 complete, if I understand this, that he was going</p> <p>15 to make to the full board. So all this</p> <p>16 information was going to the full board.</p> <p>17 Q. Why was that sent to your chief of staff in</p> <p>18 advance in draft form?</p> <p>19 A. I don't know, looking for some input, some</p> <p>20 aspects of this thing that, you know, we should</p> <p>21 consider that maybe we haven't. I don't know,</p> <p>22 you'd have to ask him.</p> <p>23 Q. Why would it have been addressed to Andy Hodgkin</p> <p>24 and Jamia McDonald?</p> <p>25 A. I said you'd have to ask them. I have no</p> |

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1 idea. I don't.
2 Q. Well --
3 MR. WISTOW: Why is Saul sending it
4 to them, is that the question?
5 Q. The question is why Mike Saul would have been
6 sending this draft slide dec. a day before the
7 June 9 board meeting EDC?
8 A. Could have been looking for feedback, input.
9 Q. Feedback from you?
10 A. No, from them. It's sent to them.
11 Q. And why would he be looking for feedback from
12 Mr. Hodgkin and Ms. McDonald?
13 A. You'd have to ask him. I don't know.
14 Q. You have no idea whatsoever?
15 A. No, I don't. Let me read it again. As I
16 understand, this was just preparation of what was
17 going to go to the full board in terms of the
18 concept that had been discussed at that point and
19 the beginning of a process.
20 Q. Again, this wasn't being shared with the board at
21 large, this was just sent to your office?
22 A. It was shortly thereafter.
23 Q. The next day?
24 MR. WISTOW: The next day.
25 A. In the board meeting, yes. You wouldn't

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1 necessarily send a draft to the full board. What
2 you send to the full board in preparation is the
3 completed document that you're intending to
4 present, or else it's passed out at the board
5 meeting, which happened occasionally if it wasn't
6 prepared ahead of time.
7 Q. But why would Mr. Saul have been selective in
8 sending it to your office and not to the office,
9 of, let's say, Mr. Verrecchia, the vice chair?
10 A. Again, it's only conjecture.
11 MR. WISTOW: No conjecture. If you
12 know, tell him. If you don't --
13 A. I don't know --
14 MR. WISTOW: That's it, that's the
15 answer.
16 A. -- I don't know how many times I have to say
17 that.
18 Q. You've had an opportunity to look through the
19 actual draft slide dec., and we are going to go on
20 to a final version of this. Confining our
21 attention to Exhibit 357 at the moment. Can you
22 see any reference to a draft letter of intent,
23 namely, the draft letter of intent you had
24 received as of April 1, 2010 relative to the loan
25 to 38 Studios in this slide dec.?

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1 A. No.
2 Q. Do you see anywhere reference to the fact that you
3 had met at the EDC with Curt Schilling and others
4 representing 38 Studios on April 9, 2010 in this
5 slide dec.?
6 A. No.
7 Q. Do you see any reference to the fact that Mr. Lane
8 had met on two occasions with representatives of
9 38 Studios in the slide dec.?
10 A. No. That doesn't mean that wasn't discussed
11 in the course of the meeting that Steve didn't
12 make some comments, that he had visited the
13 company or that I might not have commented that,
14 you know, I had met with Schilling and company. I
15 mean, I don't recall but that's very --
16 Q. Let's take a look at the actual -- I'm going to
17 ask you to take a look at Exhibit 116, please,
18 which are the board meeting minutes for the June
19 9, 2010 full EDC meeting. Do you have that in
20 front of you, sir?
21 A. Yes, I do.
22 Q. Why don't you take a minute or two and just leaf
23 through it, if you would, please. For the record,
24 that is a document bearing Bates stamp RIEDC 11665
25 through and including 11669. Do you have that?

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1 THE WITNESS: I'm sorry, I was
2 reading.
3 Q. Do you have that in front of you?
4 A. I have 116. Exhibit 116?
5 MR. HOLT: Yes, sir.
6 THE WITNESS: Yes.
7 MR. DOLAN: Which number is this
8 now?
9 MR. HOLT: This is Exhibit 116.
10 A. Okay.
11 Q. Do the meeting minutes of the June 19, 2010
12 meeting reflect the fact that you had received a
13 briefing memorandum on the 38 Studios contemplated
14 transaction on April 1, 2010, more than two months
15 before the June 9 meeting?
16 A. No.
17 Q. Does it reference the fact that you had received a
18 draft letter of intent with specific economic
19 terms, namely, a \$75 million potential loan --
20 A. No.
21 Q. -- on April 1. Does it mention the fact that you
22 had had a meeting with Curt Schilling in April of
23 2010?
24 A. It doesn't -- the April meeting, not when I
25 went to his house.

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1 Q. April meeting?

2 A. Subsequently, no, but it came up. It doesn't

3 mention that. It's not a verbatim. There's lots

4 of discussion that occurs at a board meeting. The

5 minutes are just that, they're distilling on the

6 part of the person writing the minutes of the

7 salient discussions, but there are lots more

8 discussion than four pages on this issue.

9 Q. Well, confining your attention to the minutes that

10 were prepared by Stolzman, the drafter of the

11 draft letter of intent. Is there any specific

12 reference to the fact that you had already met --

13 A. No, I already said, the answer was no.

14 Q. And --

15 A. But all I'm saying is it is not necessarily

16 inconsistent that I might have noted in the course

17 of discussion in the meeting that I had met Curt

18 Schilling in Keith's office previously.

19 Q. But it certainly doesn't appear in these minutes?

20 A. It doesn't appear. I don't know how else to

21 say it.

22 Q. Let's go back to the draft meeting minutes,

23 Exhibit 357.

24 MR. WISTOW: What did you call them,

25 draft meeting minutes?

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1 MR. HOLT: Thank you.

2 Q. The draft slide presentation, which is Exhibit

3 357, attached to the e-mail Mike Saul to Andrew

4 Hodgkin, Jamia McDonald dated June 8, do you have

5 that?

6 A. Yes.

7 Q. This -- I'd like to draw your attention to Page

8 16, which is Bates stamped 4052 of the slide dec.

9 which is a June 8th draft.

10 A. Wait, I'm sorry. Are we still on the

11 minutes?

12 Q. I'm sorry, you got to pick up the slide dec.,

13 Governor. I'm sorry if I caused that confusion.

14 The slide dec. which is exhibit --

15 A. 40, 4342, 43.

16 Q. Exhibit 357. Take a look at Page 52, please.

17 Bates stamp 52.

18 MR. DeSISTO: The last page.

19 MR. HOLT: Last page -- next to the

20 actual last.

21 Q. Now, on the -- at the very top of that under, due

22 diligence process; do you see that?

23 A. Yes.

24 Q. It says, ongoing started March 29, 2010?

25 A. Yes.

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1 Q. And by the way, who was responsible on EDC's side

2 to do due diligence in this transaction?

3 A. Well, I don't know the specific team. Keith

4 Stokes as executive director was the point person.

5 This is a large transaction, complex transaction

6 so he was the lead, as far as I was concerned.

7 Who his team was after Mike Saul. Mike was very

8 involved with it. The other members, I'm not

9 sure.

10 Q. Now if we go down the bottom of that 4052, it says

11 underneath, it says in-house RIEDC?

12 A. Uh-huh -- yes.

13 Q. It says, "Vetting proposal, several company visits

14 in meetings with management." Do you see that?

15 A. Yes.

16 Q. So this is representing -- referencing several

17 company visits, presumably that was relating to

18 visits to 38 Studios?

19 A. Yeah. I'm presuming that refers to the fact

20 that the in-house RIEDC staff had had meetings and

21 visits to 38 Studios, yes.

22 Q. Do you recognize the name Sean Esten at EDC?

23 A. No.

24 Q. How about Tim Cole?

25 A. No.

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1 Q. I'm going to ask you to take a look at what has

2 been previously marked as Exhibit D-123, please.

3 THE WITNESS: This is addressed to

4 whom?

5 Q. This is an e-mail from Sharon Penta at the EDC and

6 this one happens to be to Timothy Babineau?

7 A. Okay.

8 Q. I would represent to you that this is the actual

9 final version of the board minutes. We had drafts

10 before, the earlier exhibit dated on the 8th of

11 June. This is now a June 9 final.

12 A. I'm confused. You got Exhibit 116 here which

13 is minutes of the board meeting on June 9th?

14 MR. HOLT: That's correct.

15 A. You're saying that's not the final?

16 Q. If you set aside the board minutes, we're talking

17 about now the actual slide dec. presentation that

18 we had just been talking about, slide dec.

19 presentation, we were talking about a draft a few

20 moments ago, right?

21 A. Yes.

22 Q. And now I'm going to show you -- go to this

23 Exhibit D-123, go to the second page and -- I'm

24 sorry, go to the first page of that, what this is

25 an e-mail to Dr. Babineau, who is a board member,

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1 attaching what is, I will represent to you, is the
2 final version of the slide dec. presentation made
3 by Mr. Saul at the June 9 --
4 A. 9th meeting.
5 Q. -- 9th meeting?
6 THE WITNESS: So this was sent to
7 Babineau why? Because he was not in attendance?
8 MR. HOLT: He was not in attendance,
9 precisely.
10 MR. WISTOW: If you look down at the
11 bottom of the page, there is an e-mail from
12 Babineau asking for it, do you see it?
13 THE WITNESS: Yes, I do.
14 Q. There's no dispute, but this is the final slide
15 dec., okay?
16 A. Okay.
17 Q. Now if we were to take a look at --
18 A. Wait. There was no slide dec. attached to
19 the minutes. Sometimes they would do that as an
20 addendum to the actual minutes.
21 Q. What we're talking about now, let's go back to the
22 draft, the previous e-mail with the draft, okay
23 which was dated -- which was the June 8 version.
24 Do you have that in front of you?
25 A. Okay. Right here, what I was saying, what I

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1 would question really, Tom, is normally the
2 minutes would have, if there were a presentation,
3 you know, would have an exhibit of that
4 presentation attached to them. They were not.
5 Q. That's exactly --
6 MR. WISTOW: In view of what I've
7 seen of the minutes and the questions about some
8 of the exhibits, I just want to make it clear I'm
9 not arguing that D-123 is not the final version,
10 but I'm far from ready to stipulate that it is,
11 which is what you represented is the fact. You
12 can represent all you want. I'm not agreeing and
13 I'm not disputing it. Don't make me go and tell
14 you what the other problems with Mr. Stolzman's
15 minutes are --
16 MR. DOLAN: Move to strike.
17 MR. WISTOW: -- and the attachments.
18 I agree, Mr. Dolan, I wasn't trying to get
19 anything on the record. I just want to make it
20 clear, I just want to make it clear I'm not
21 stipulating this is the final.
22 MR. DOLAN: Usually people speak for
23 a reason, Max. Move to strike.
24 MR. WISTOW: Okay.
25 Q. Let's try and get out of the deep weeds of lawyer

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1 talk. Here's the punch line --
2 A. I agree with that.
3 Q. I agree with you, too. D-123, I will represent to
4 you, it's our understanding, in fact, it was the
5 final?
6 THE WITNESS: This is the dec. that
7 was actually presented at the board meeting?
8 MR. HOLT: That is correct.
9 MR. WISTOW: Hold it -- go ahead.
10 MR. HOLT: You can ask questions
11 later.
12 MR. WISTOW: I don't want to ask
13 questions. You weren't there, you're not in a
14 position to represent, okay, anything unless you
15 want to testify in this case. I'm not ready to
16 agree with what you said. I'm not disagreeing
17 with it, but there's been other problems. You
18 yourself, your witnesses, have brought up Wells
19 Fargo has said that's not what was presented at
20 the board, even though the minutes say that.
21 That's an example.
22 Q. Well, we have an e-mail here from Sharon Penta and
23 Ms. Penta, was an employee at EDC, and I'm talking
24 about now Exhibit 123.
25 A. You got me moving all over here.

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1 Q. You know what we're going to do --
2 THE WITNESS: Where is Sharon's?
3 MR. WISTOW: Here, here's Sharon's
4 e-mail.
5 MR. HOLT: There it is right there.
6 You've turned it over, Governor, I think. You got
7 it in your hand.
8 THE WITNESS: Here it is.
9 Q. Great. We're on the same page here. D-123.
10 A. All right.
11 Q. And this is -- appears to be an e-mail from Sharon
12 Penta, right?
13 A. Yes.
14 Q. Do you know who Sharon Penta was?
15 A. Yes, she was a staff assistant there at EDC.
16 Q. Right. It's addressed to Tim Babineau, Dr.
17 Babineau, who is a board member, right?
18 A. Yes.
19 Q. And in this e-mail from her she has attached --
20 basically says on the third line down, "I have
21 attached a copy of the PowerPoint that was
22 discussed at the meeting which took place in
23 executive session." Do you see that?
24 A. Yes.
25 Q. So based on this e-mail from Ms. Penta to a board

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| <p>1 member in which she states that, "I've attached a 2 copy of the PowerPoint that was discussed at the 3 meeting which took place in executive session." 4 I'm going to represent to you it's my 5 understanding that the attached slide dec. to 123 6 is in fact the version that was presented? 7 MR. WISTOW: I'm going to say it 8 again. It's not relevant what your understanding 9 is. Penta says this was produced and shown at the 10 meeting, so there's certainly evidence of that. 11 But I'm not ready to conclude that it's 12 conclusive. There have been other errors in this. 13 MR. HOLT: I'm not asking for you -- 14 that's fine. Fair enough. 15 MR. WISTOW: That's all. 16 Q. Let's go to the slide dec. that's attached to Ms. 17 Penta's e-mail, D-123, and that is Bates 18 stamped -- 19 THE WITNESS: What is a Bates stamp, 20 by the way? 21 MR. HOLT: It's a numbering system we 22 use in litigation. 23 THE WITNESS: Mine on the bottom on 24 this copy I can't read. 25 MR. HOLT: Right.</p> | <p>1 done and nobody did any work and nobody has been 2 working on this for weeks and months at a time. 3 The fact that it doesn't say that, you know, to me 4 is not relevant and significant. 5 Q. Fair enough. But it doesn't say it, in any event, 6 does it? 7 A. No, it doesn't. 8 Q. Now, let's go down to the section under due 9 diligence RIEDC on the draft version, Page 16, 10 that has a line entry, "vetting proposal, several 11 company visits with meetings with management." Do 12 you see that? 13 A. Yes. 14 Q. And I think you told me before based on that you 15 would have assumed the referencing company was to 16 38 Studios, right? 17 A. Yes. 18 Q. Now if we take a look at the version that was sent 19 to Dr. Babineau, that reference to, "Company 20 visits and meetings with management," has been 21 deleted in that version, right? 22 A. Yes. 23 Q. Do you know who decided to delete that provision? 24 A. No. I have no idea. 25 Q. Now, let's go back to the --</p> |
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| <p>1 Q. Let's go to Page 16, BR061574 of the Penta slide 2 dec. Do you have that? 3 A. Yes. 4 Q. Let's take a look at the top of Page 16 of the 5 draft version which is I think directly in front 6 of you. Below next to your elbow, let's take a 7 look at the very top bullet point. Under due 8 diligence process, it's stated, "Ongoing...started 9 March 29, 2010," that's in the draft version? 10 A. Yes. 11 Q. If we take a look at the version that Ms. Penta 12 sent to Dr. Babineau, a board member, that line is 13 dropped out, is it not? 14 A. It appears that way, yes. 15 Q. So anyone looking at this slide dec. for the first 16 time in the purportedly final form would not have 17 known from the basis of this slide dec. that 18 actually EDC staffers had begun work, at least as 19 early as March 29 on the 38 Studios loan, right? 20 A. Well, it's not specifically on the slide, but 21 I'm sure in the course of conversation it would 22 have been made aware that the staff has been 23 working on this for months. You know, they knew 24 that. This wasn't like it just happened. The 25 board would not expect, oh, here it is, it's all</p> | <p>1 A. It looks to me as though the first bullet 2 point there is more inclusive and broader than any 3 of the others. So somebody must have just 4 decided, or possibly could have, normal credit due 5 diligence would encompass a number of these 6 specifics, but that's only conjecture on my part. 7 Q. Now when you use the term normal credit due 8 diligence, what do you have in mind? 9 A. Well, presume, again, I don't know exactly 10 what they did, but you meet with the company you 11 go through your projections, you listen to their 12 business plan, you go through the likelihood of 13 repayment, the amount of money they're going to 14 need. All of that process that they would do 15 internally, which is my understanding they did do. 16 Q. When you're saying they, you mean EDC staff? 17 A. EDC staff, yes. Then from the board's 18 standpoint, the board felt they needed outside 19 expertise and consultants that would give us a 20 better view. Because I think at this stage, if my 21 memory serves me, it was more an overview of the 22 industry generally. Is this an industry that we 23 wanted to play in and that could be, you know, 24 something positive for the state in terms of 25 generating jobs and all the things I referred to</p> |

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| <p>1 earlier. This was not the details of a 2 transaction in that it articulated the process 3 after that, including the firm you represent and 4 Strategy Analytics and, you know, outsiders, to 5 sort of advise the board and give more input. 6 Q. Is it your testimony that the board retained Wells 7 Fargo to do due diligence on behalf of EDC? 8 A. Well, Wells Fargo made a presentation. I 9 don't know who retained whom in that. I don't 10 know, Tom, but I do know they made a presentation 11 to the board, and I do know that Strategy 12 Analytics made a presentation to the board. 13 Q. Did you ever meet face-to-face with any 14 individuals whom you understood to be working at 15 Wells Fargo in connection with this 38 Studios' 16 loan? 17 A. Not that I was aware of. 18 Q. Do you know if Mr. Stokes ever sat down and met 19 face-to-face with anyone? 20 A. I don't know that. 21 Q. You talked about the credit due diligence process. 22 I want to go back to a reference earlier you 23 mentioned that you had been at Old Stone Bank. I 24 think we agreed you had been on the credit 25 committee at Old Stone Bank, right?</p> | <p>1 make a loan, right? 2 A. Yes. 3 Q. Now, do you know if or did you ever see a credit 4 memorandum of the nature we've just been talking 5 about -- 6 A. No. 7 Q. -- prepared in connection with the 38 Studios 8 transaction? 9 A. No. 10 Q. Did Wells Fargo ever prepare a credit 11 memorandum -- 12 A. I have no idea. Could I just add, there were 13 evaluations, from my memory, evaluations done of 14 the projections, the company's projections in 15 terms of cash flow and revenue that were done, I 16 think. I don't know if Wells Fargo did, but I 17 know they were done that verified, you know, that 18 the projections looked reasonable. 19 Q. When you say verified, what do you mean verified? 20 A. Based on the work that was done, corroborated 21 that the company's projections were reasonable. 22 Q. Done by whom? 23 A. That's what I'm saying, I don't remember 24 exactly. All I know is that there were some done. 25 MR. WISTOW: Maybe we could go</p> |
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| <p>1 A. Yes. 2 Q. And part of the job of the credit committee would 3 be to really determine whether or not a customer 4 could actually pay back a loan, right? 5 A. Correct. 6 Q. And I've heard mentioned something referred to as 7 a credit memorandum or credit memo, did you ever 8 hear that term used in your experience in 9 commercial banking as a member of a credit 10 committee? 11 A. Yes. 12 Q. Did you -- what's the purpose of a credit 13 memorandum? 14 A. In the banking world it's generally the work 15 of a credit analyst who has reviewed the 16 transaction and with all of the cash flows, et 17 cetera, and then comes to a recommendation. 18 Q. So when you say a credit analyst, that would be a 19 credit analyst working on behalf of the lender, 20 correct? 21 A. Yes. 22 Q. And that credit analyst would want to -- the 23 credit analyst may prepare something known as a 24 credit memorandum to be considered by the credit 25 committee before they agreed, either yes or no, to</p> | <p>1 through the exhibits to the meetings. 2 Q. Now, I referenced earlier in my questions today an 3 interview that you gave with Tim white at WPRI; do 4 you remember talking about that? 5 A. I remember going to the interview, yes. 6 Q. And do you recall talking about the projects that 7 were being considered or were considered by the 8 EDC board before agreeing to make the loan to 38 9 Studios? 10 A. No, I don't recall, you know, the interview. 11 Q. Well, do you have recollection of saying that 12 projections are simply a best guess as to likely 13 performance of a company? 14 A. As I said, I don't recall what I said. 15 That's not inconsistent, because I do believe 16 that's what projections are. Nothing is for 17 certain. This is based upon the best guesses of 18 the people, and you test them for reasonableness, 19 but I don't remember what I said to Tim White. 20 Q. So, can we agree that projections really are 21 someone's best guesstimate as to what might happen 22 in the future, but they're essentially inherently 23 unverifiable, you just don't know? 24 MR. LEDSHAM: Objection. 25 A. Yes, sort of like the weather. I shouldn't</p> |

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1 joke like that. Better than the weather. There's
2 more analysis, less variability, hopefully, than
3 the weather.
4 Q. Now, let's stay on the Exhibit 357 and, again, on
5 Page 16?
6 A. That's the one we are just referring to, yes,
7 sir, that's right. Due diligence process.
8 Q. You see -- let's take both of them. Both of them
9 refer to Wells Fargo?
10 THE WITNESS: 357 is this one?
11 MR. HOLT: Yes, that's right.
12 Q. 357, both 357 and D-123, Page 16, both refer to
13 Wells Fargo, do they not?
14 A. Yes.
15 Q. Under the due diligence process, it has Wells
16 Fargo, and it has, "Review of private placement
17 memorandum for equity offering." What's your
18 understanding who was going to do the review of
19 the referenced private placement?
20 A. I don't recall. I don't recall.
21 Q. You don't know -- well, it was under due diligence
22 process. Would that reasonably lead you to
23 believe that someone at the EDC would be reviewing
24 any private placement memoranda that had been
25 prepared by Wells Fargo?

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1 MR. WISTOW: Objection.
2 A. Not necessarily. I don't know who is
3 qualified. You have lawyers that review private
4 placement memorandum, et cetera. So I don't know
5 whether Rob Stolzman did or not, but I have no
6 knowledge of that.
7 MR. DOLAN: Move to strike.
8 (COUNSEL CONFERRING WITH WITNESS)
9 Q. I'm going to ask you just to keep the Exhibit
10 D-123 and --
11 THE WITNESS: Are they going to come
12 to that one?
13 MR. WISTOW: Not the way we're going
14 now, it will be six months from now.
15 (COUNSEL CONFERRING WITH WITNESS)
16 MR. HOLT: I'm going to ask you,
17 Governor, to take a look at D-6, please. Do you
18 have D-6 in front of you?
19 MR. WISTOW: Actually, is it
20 double-paged?
21 MR. VALENTE: It is double-sided.
22 MR. WISTOW: Mine is twice as thick.
23 MR. HOLT: That's double-sided.
24 THE WITNESS: This is double-sided.
25 MR. WISTOW: D-6 is single-sided,

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1 maybe it's easier to look -- I'm going to give him
2 my single sided.
3 THE WITNESS: That's just so you
4 don't have to carry it.
5 MR. WISTOW: That's right.
6 Q. Now, let's take a look at D-6 and just in the
7 interest of time, I'm going to just look at the
8 cover page there, but I'm also, just so you're
9 aware of the line of questioning we're going to be
10 going on here, I am going to be talking about the
11 equity PPM that's referenced in the slide dec.
12 that we've been talking about, okay?
13 THE WITNESS: Equity PPM?
14 MR. HOLT: Private placement
15 memorandum.
16 THE WITNESS: For the 75 million?
17 MR. HOLT: Yes.
18 MR. WISTOW: No.
19 Mr. HOLT: Well, no --
20 Q. Let's go -- we have a reference on Page 16 of the
21 slide dec. prepared by Mr. Saul for the June 9
22 meeting --
23 A. Right.
24 Q. -- of the board. And under Wells Fargo it says,
25 "Review of private placement memorandum of equity

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1 offering," do you see that?
2 A. Yes.
3 Q. Okay. I am going to be going on to some questions
4 about the equity -- the private placement
5 memorandum that's referenced on Page 16, okay?
6 I'm going to show you that in a moment.
7 A. Okay, you're going to quickly get over --
8 you're well beyond me into the weeds on this.
9 This says due diligence is going to be a review
10 of, so Wells Fargo is going to review the private
11 placement memorandum; is that what that says?
12 MR. HOLT: No.
13 MR. WISTOW: Don't say that.
14 MR. HOLT: I'm not going to
15 characterize it. I'm going to show you the
16 private placement memorandum for the equity
17 offering. It is referenced under the Wells Fargo
18 bullet, okay. I'm going to actually show you what
19 Mr. Saul is referring to there.
20 THE WITNESS: Okay.
21 Q. Now, that's attached as part of Exhibit D-6 that
22 you have in front of you. All right?
23 A. Okay.
24 Q. Now, let's take a look at the very top of the
25 exhibit. That appears to be an e-mail from

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1 Michael Saul dated Monday, July 12, 2010; do you
2 see that?
3 A. Yes.
4 Q. Incidentally, that would have been approximately
5 three days before the July 15 special board
6 meeting, right?
7 A. But after the --
8 Q. June 9th meeting?
9 A. -- after the June 9th, and was there another
10 one in June? I don't remember.
11 MR. WISTOW: Would it be all right if
12 we give him the dates to help orient him?
13 MR. HOLT: Sure.
14 MR. WISTOW: The four board meetings
15 were June 9th, June 14th, July 15th and July 26,
16 just to orient you.
17 THE WITNESS: And this is dated July
18 12th. So this would have been after two of the
19 board meetings and prior to the third?
20 MR. HOLT: Before the special July
21 15th board meeting.
22 THE WITNESS: Okay.
23 Q. I think earlier, just maybe to further orient you
24 in a time line here, when I was talking to you
25 about Rosemary Gallogly, I think you said you

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1 recall getting a memorandum but you did not
2 present that to the board at the July 15th meeting
3 that Mr. Wistow just referred; do you recall that
4 testimony?
5 A. Yes.
6 MR. WISTOW: I think the record, in
7 fairness, that memo was sent at 5:36 at night and
8 the board meeting, as we discovered, was the
9 following morning. So we don't know when the
10 Governor got it. Why don't you ask him.
11 MR. DOLAN: Max, will you stop
12 testifying. It's totally inappropriate. If you
13 have an objection, state it.
14 MR. HOLT: Ms. Gallogly stated she
15 gave this to the Governor before the July 15
16 meeting in her memorandum.
17 MR. WISTOW: No, she didn't.
18 MR. HOLT: She testified to that.
19 MR. WISTOW: No, she didn't. She did
20 not.
21 MR. HOLT: Let's stop right there.
22 Let's stop.
23 MR. WISTOW: You get to testify,
24 nobody objects. I say something and I get an
25 objection. I don't see the difference.

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1 MR. HOLT: Maybe there's a message
2 there.
3 Q. Let's go through Exhibit D-6 here, it's from
4 Michael Saul to Maureen Gurghigian, she's at First
5 Southwest. Do you know Maureen Gurghigian?
6 A. Yes, I've met her. She's done a lot of work
7 for the state.
8 Q. It's also addressed to Rosemary Booth Gallogly,
9 right?
10 A. Yes.
11 Q. Now, this e-mail also has a copy going to Jamia
12 McDonald; do you see that?
13 A. Yes.
14 Q. Now, Jamie McDonald would have been receiving this
15 e-mail in her capacity as a, or your deputy chief
16 of staff, correct?
17 MR. WISTOW: Objection.
18 A. I don't know. I presume that.
19 Q. Do you have any reason to believe that Jamia
20 McDonald would have withheld from you any of the
21 information attached to D-6?
22 MR. WISTOW: Objection.
23 A. No. I can guarantee you she would not have
24 forwarded a package like this to me, that's for
25 sure. Okay. I don't have time, didn't have time

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1 to go through, that's what you have lawyers for,
2 financial advisors, that's what you have, you
3 know, staff for. All right. There's no --
4 Q. When you say staff, such as Jamia McDonald?
5 A. EDC staff.
6 Q. What about your own staff?
7 A. You know, I don't know why she would have.
8 Generally, Jamia didn't get involved in, you know,
9 private placements and that. That would be the
10 purview of Rosemary and/or Maureen who worked with
11 Rosemary.
12 Q. Why would Ms. Gallogly have gotten this?
13 A. I said that generally Rosemary, who is the
14 most knowledgeable and accomplished in terms of
15 public financings, she's regarded highly around
16 the country in terms of her expertise in
17 financing, government financing, state financing
18 in particular.
19 Q. She would have been the one most knowledgeable in
20 public financing, state financing within your
21 administration at that time, right?
22 A. Yes. I would say that's true --
23 Q. Now --
24 A. -- of the paid staff. We always generally
25 had, you know, lawyers, outside lawyers, bond

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| <p style="text-align: right;">Page 161</p> <p>1 counsel, et cetera. 2 Q. I'm talking about most knowledgeable within your 3 administration, paid staff, paid by the State of 4 Rhode Island who were part of your administration 5 as Governor of the State of Rhode Island, right? 6 A. Yes. 7 Q. Let's take a look at -- let's go through the Bates 8 stamps here. Let's take a look at the first -- at 9 page APS 10955. Do you have that in front of you? 10 A. Yes. 11 Q. And we see here that this is entitled a Private 12 Placement Memorandum of 38 Studios, right? 13 A. Yes. 14 Q. And that has on the first page a reference to Rob 15 Stolzman; do you see that? 16 A. Yes. 17 Q. And that there's a copy number; do you see that? 18 A. P113, yes. 19 Q. And the date on this page 10955 is May 23rd, 2010, 20 right? 21 A. Yes. 22 Q. And that was before the May 24 EDC board meeting, 23 right? 24 A. Yes. 25 Q. That would have been before the June 9 slide dec.</p> | <p style="text-align: right;">Page 163</p> <p>1 MR. WISTOW: D-6, why don't you show 2 him where the reference is. It helps orient. Do 3 you see the reference to Wells private placement 4 memo, why don't you read that for a minute. 5 Q. If we take a look at -- 6 MR. WISTOW: Why don't you just let 7 him read the exhibit you gave him for just a 8 moment. 9 Q. In the interest of time, and I don't disagree -- 10 MR. WISTOW: It's going to take a 11 moment. It's three lines, let him read it. It's 12 been four years since this transaction. 13 THE WITNESS: This is from Mike Saul 14 to Maureen, copy to Rose, it's referring to 15 questions -- 16 (OFF THE RECORD) 17 (WITNESS READING DOCUMENT) 18 MR. WISTOW: The particular reference 19 is right up here. 20 THE WITNESS: I'm trying to 21 understand the context here, Max. Why is this 22 relevant, unless what somebody is saying here is 23 there's lot of information in this private 24 placement memorandum regarding 38 Studios that 25 would be relevant to an evaluation that we would</p> |
| <p style="text-align: right;">Page 162</p> <p>1 presentation, right? 2 A. Yes. What is this, by the way, what is this 3 a private placement of? 4 MR. HOLT: Private placement of the 5 potential equity offering that was being 6 contemplated by 38 Studios, and this is the 7 document that is referenced under the Wells Fargo 8 bullet on Page 16 of the Saul slide dec. 9 MR. WISTOW: Take a look at the 10 second page, it explains what it is. 11 (DOCUMENT SHOWN) 12 MR. WISTOW: Just take a moment and 13 read that. 14 (PAUSE) 15 THE WITNESS: They were trying to 16 sell 55 -- contemplating the sale of 55 million 17 shares of Class B stock? 18 Q. Again, this is the -- 19 A. I'm trying to -- trying to understand what 20 does this have to do with our transaction. 21 Q. It's specifically referenced in Mr. Saul's slide 22 dec. on 16. If you take a look at Wells Fargo 23 review of private placement memorandum of equity 24 offering; do you see that? That is referring to 25 the APS 10955 and successive pages, okay.</p> | <p style="text-align: right;">Page 164</p> <p>1 be making. 2 MR. HOLT: That's correct. 3 THE WITNESS: I'm trying to put it 4 into a context here. 5 Q. So, what we have here, just because I do want to 6 get to the actual equity PPM itself. We have 7 Exhibit D-6, which is an e-mail to Maureen 8 Gurghigian and Rosemary Booth Gallogly, your 9 deputy chief of staff, Jamia McDonald, is copied 10 on it and in it it is addressed to Rosemary 11 Gallogly, director of administration, acting 12 director of revenue in your administration, 13 indicating a list of information or items that 14 Mr. Saul is sending to Ms. Gallogly; do you see 15 that? 16 A. Yes. 17 Q. Okay. His response is to questions that Ms. 18 Gallogly had concerning the 38 Studios 19 transaction? 20 A. I was just going to say this sounds to me, 21 particularly question 5, that she might have 22 copied him -- did she copy him on the memo she 23 sent to me? 24 MR. HOLT: She had not prepared it as 25 of that date?</p> |

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| <p style="text-align: right;">Page 165</p> <p>1 THE WITNESS: If she had some of 2 these concerns previously, had voiced those to 3 EDC? 4 MR. HOLT: That is correct. And in 5 response to her concerns, in advance of preparing 6 her July 14 memo to you, she received this 7 information, okay. 8 THE WITNESS: Okay. 9 Q. Now, so before she wrote her memorandum to you, 10 she would have received the actual EDC staff 11 presentation to the RIEDC board, and that's the 12 final draft 6-8-2010, and that is the reference we 13 had to both D-123 and Exhibit 357 that we've been 14 talking about. Okay. The slide decs. 15 A. You're getting me lost, Tom. But okay. No, 16 no -- you keep going back to, you know -- 17 Q. Stay with me, Governor, you're a smart, guy we can 18 with work our way together. You got two slide 19 decs. here, basically, virtually identical? 20 A. The one you were purporting was the final, 21 you know, what was presented to the board. 22 MR. HOLT: That's right. 23 THE WITNESS: Is that the one we're 24 talking about, or are we talking about the 25 previous one?</p> | <p style="text-align: right;">Page 167</p> <p>1 trying to respond to questions that Rosemary asked 2 and presenting, you know, a lot of this. Why 3 Maureen would be recipient to this? I'm lost. 4 MR. WISTOW: I'm more than lost. I 5 just want to put something on the record. The 6 attachment, D-6, this is a Defendants' exhibit 7 that was put in. Does this purport to have the 8 final presentation to the board or not? 9 MR. HOLT: Which presentation? 10 MR. WISTOW: There's two 11 presentations. 12 Mr. HOLT: It doesn't purport either 13 way. 14 MR. WISTOW: It says final report -- 15 excuse me, it says final draft, 6-8-2010, 16 executive session, 38 Studios, and what's attached 17 is what you -- the opposite of what you 18 represented was final. 19 MR. HOLT: What I'm suggesting to you 20 is -- 21 MR. WISTOW: Take a look at it. 22 MR. HOLT: I understand what you're 23 saying, but there is no bearing on my questions 24 here. 25 MR. WISTOW: I understand that. But</p> |
| <p style="text-align: right;">Page 166</p> <p>1 MR. HOLT: For this purpose it's 2 interchangeable because the focus is going on the 3 Wells Fargo. Just to be clear. Linda, my 4 apologies, we're talking over each other and, 5 forgive me, Governor, for doing that. 6 THE WITNESS: I wanted to get clear 7 in either of these -- the Wells Fargo reference is 8 the same? 9 MR. HOLT: That is correct, Governor. 10 Q. Now, going back to D-6, Ms. Gallogly is asking for 11 information in advance of preparing a memorandum 12 to you, that memorandum being dated July 14, 2010, 13 she gets from Mr. Saul a listing of documents that 14 are attached as part of D-6, okay? 15 A. Okay. Let me understand now. You are saying 16 that this package from Mike Saul was in response 17 to Rosemary saying she would like answers to some 18 questions regarding 38 Studios? 19 MR. HOLT: That's correct. 20 THE WITNESS: Why would Maureen be 21 on this, then? 22 MR. HOLT: I don't know. I don't 23 know. 24 THE WITNESS: That's what I'm 25 confused about. I can understand the staff at EDC</p> | <p style="text-align: right;">Page 168</p> <p>1 I'd like the record to show that what was sent 2 out, apparently, was the earlier version. There's 3 no doubt about that. 4 MR. HOLT: There's no doubt about 5 that. The earlier version was sent to Ms. 6 Gallogly. 7 MR. WISTOW: On July 12 8 MR. HOLT: That is correct, Max. We 9 agree on that. We agree on that. 10 MR. DeSISTO: The provisions on Wells 11 Fargo are different in each of those; do we agree 12 with on that? One says reviewed private 13 placement -- 14 MR. WISTOW: They're not the same. 15 MR. DeSISTO: -- the other says 16 review of private placement. 17 MR. HOLT: What we have here -- 18 that's a good point. 19 MR. WISTOW: Because you've 20 represented they're identical, they're not 21 identical. 22 MR. HOLT: They're identical insofar 23 as they refer to, in Exhibit D-123, which is the 24 Penta version, the language is, "Reviewed private 25 placement memorandum for equity offering." The</p> |

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| <p>1 version which is the draft version does say, 2 "review of private placement." 3 Q. Now, Governor -- 4 MR. WISTOW: Excuse me. Do they 5 both have -- I'm really lost. Do they both say, 6 "Complete review of Wells Fargo assessment of 38 7 Studios' business model and investment 8 opportunity"? Is that in both? Can we just take 9 a minute? 10 MR. HOLT: What I'm looking at is 11 Page 16. 12 MR. WISTOW: Is 17 the same on both 13 of them? This is massive confusion. 14 MR. HOLT: If you let me finish my 15 question, in all fairness -- 16 MR. WISTOW: But in all fairness, the 17 witness is mixed up as to which exhibits, you 18 represent to him the portion that you're 19 addressing is identical in both places and Marc, 20 quite correctly, points out that's not right. 21 Let's just take a minute, let's take one minute 22 and let's just take one minute and see if we can 23 get organized, just one minute. 24 MR. HOLT: I agree -- 25 MR. WISTOW: Please don't speak while</p> | <p>1 and what I'm going to do is use the version 2 which is D-123, if I may, please. 3 A. It's not in here. 4 Q. Just put everything else aside. Let's take a look 5 at this Exhibit D-123, and that has attached to it 6 the third page in a slide dec. presentation which 7 is dated RIEDC board meeting 6-9-10, that would be 8 June 9, 2010. That is the board meeting we were 9 talking about earlier this afternoon, right? 10 A. Yes, we've talked about a number of them, but 11 yes. So this is the one -- 12 Q. Just take a look at this particular document. 13 A. It's deemed to be the final one, but it's not 14 the one consistent -- 15 MR. WISTOW: With what was sent. 16 Q. With what was sent to Maureen Gurghigian, that is 17 correct? 18 A. Right. 19 MR. WISTOW: And Gallogly. 20 Q. And to Gallogly, not consistent only with respect 21 to the June 9 reference, okay. 22 MR. WISTOW: No, no, there's other 23 problems. 24 MR. HOLT: Max, propose an objection 25 if you want to.</p> |
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| <p>1 I -- 2 MR. HOLT: Let's go off the record. 3 THE VIDEOGRAPHER: Going off the 4 record. This is the end of Disk Number 3. 5 (OFF THE RECORD) 6 (Recess) 7 THE VIDEOGRAPHER: Back on the 8 record, this is the beginning of Disk Number 4. 9 Q. Now, I am not going to spend too much more time on 10 Exhibit D-6 here, but just to note that this is an 11 e-mail that was sent on Monday, July 12, 2010, 12 from Mike Saul to Rosemary Gallogly, okay. 13 A. Uh-huh -- yes. 14 Q. Now, let's take a look -- 15 A. And Maureen -- 16 Q. Gurghigian? 17 A. -- Gurghigian. 18 Q. Correct. And we can agree that that e-mail and 19 that attached packaged of information was sent on 20 July 12 which is the date before Ms. Gallogly 21 prepared her memorandum for you, right? 22 A. Yes. 23 Q. Now, with respect to the Gallogly memorandum -- 24 let me withdraw that question. Let's see if we 25 can't just go through the slide dec. presentation,</p> | <p>1 MR. WISTOW: You say the only 2 difference is that it's got a date of June 9. 3 There's differences. 4 MR. HOLT: That's not what I'm 5 saying. 6 Q. What I'm saying here is I want you to focus on 7 D-123, which is different from the slide dec. for 8 the June 9 -- 9 A. That is referenced in D-6. 10 Q. -- we can agree on that? 11 A. Okay. 12 Q. Now, let's -- do you actually recall seeing this 13 presentation? 14 A. Not in any detail or anything. I recall Saul 15 making a presentation as one of many. The process 16 began, you know, at this meeting and then there 17 were three others. So there were lots of 18 presentations, but I do remember Saul making a 19 presentation, okay. You know, I don't recall 20 details of it consistency. I don't recall. 21 Q. Okay. Let's go to what has -- bears the Bates 22 stamp ending with 61568, and maybe it's easier if 23 you look at the lower left-hand corner there are 24 pages numbered. So if you go to Page 10, perhaps 25 on the internal numbering on the slide dec. This</p> |

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| <p>1 refers to project risks and rewards, right?</p> <p>2 A. Right.</p> <p>3 Q. It's referring to the actual 38 Studios project</p> <p>4 and loan, right?</p> <p>5 A. Yes.</p> <p>6 Q. And this has a reference to prerevenue company,</p> <p>7 does it not?</p> <p>8 A. I'm just trying to look back. The</p> <p>9 presentation switched from sort of industry data</p> <p>10 to, you know, 38 Studios specifically. Yes.</p> <p>11 Q. And while we're on that topic of industry data, do</p> <p>12 you know where Mr. Saul would have gotten the</p> <p>13 so-called industry data that's on the first nine</p> <p>14 pages of Exhibit D-123?</p> <p>15 A. No, I don't.</p> <p>16 Q. We get now to something more specific.</p> <p>17 MR. WISTOW: Excuse me. It's not the</p> <p>18 first nine pages, 38 Studios starts specifically</p> <p>19 at least on Page 6.</p> <p>20 MR. HOLT: Max, please.</p> <p>21 MR. WISTOW: I'm not trying to be</p> <p>22 difficult. I want to make sure I got the right</p> <p>23 exhibit.</p> <p>24 MR. HOLT: Please Max, I think you're</p> <p>25 testifying, interrupting this examination. Let me</p> | <p>1 by prerevenue was 38 Studios at least as of June</p> <p>2 9, 2010 had not made any money?</p> <p>3 A. Yes. They were producing a game, in the</p> <p>4 process of that, and were close to finalizing the</p> <p>5 first one, and that's what we understood.</p> <p>6 Q. But the point is they hadn't made any money as of</p> <p>7 that date?</p> <p>8 MR. LEDSHAM: Objection.</p> <p>9 A. Correct.</p> <p>10 Q. Now let's go on to the next heading down there,</p> <p>11 "Product not yet branded." What did you</p> <p>12 understand that to mean?</p> <p>13 A. Well, could I back up a minute. If I go</p> <p>14 through this slide, there's a lot of things that</p> <p>15 came out in this presentation that mitigated</p> <p>16 against the risk, if you will, here, that they had</p> <p>17 not produced any revenue yet. All of these</p> <p>18 things, evaluations, EA thought they could sell 4,</p> <p>19 5 million units, was very bullish on Copernicus EA</p> <p>20 didn't take on that many distributions, as it says</p> <p>21 here. And they selected the first game for</p> <p>22 distribution. So, you know, you're highlighting</p> <p>23 one, but the point is, in this presentation, there</p> <p>24 were a lot of mitigating factors that were also</p> <p>25 covered in the process. So, the board had the,</p> |
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| <p>1 try a new question here, Max.</p> <p>2 Q. Let's go to Page 10; do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Page 10 refers to prerevenue company, does it not?</p> <p>5 A. Yes.</p> <p>6 Q. And that's under the risks provisions or section,</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. And that's referring to 38 Studios, the company?</p> <p>10 A. Yes.</p> <p>11 Q. What did you understand the term prerevenue</p> <p>12 company to mean?</p> <p>13 A. Well, they hadn't gotten the game to market.</p> <p>14 They were working on one game that they had been</p> <p>15 working on for a number of years, it was pretty</p> <p>16 close, in their minds, in getting to market, what</p> <p>17 do you call it, the Mercury, or the one that was</p> <p>18 down in Maryland, and then they had been working</p> <p>19 on Copernicus, which was the MMOG, the big one,</p> <p>20 also for a few years.</p> <p>21 So my understanding of prerevenue meant they</p> <p>22 hadn't completed the first -- the first one, as I</p> <p>23 recollect, was forecast to be completed before the</p> <p>24 second one.</p> <p>25 Q. Well, it would be fair to say what is meant here</p> | <p>1 you know, all the advantage of understanding the</p> <p>2 risks, but also looking at all those things that</p> <p>3 mitigated the risk at the end of the day felt that</p> <p>4 it made it worthwhile pursuing.</p> <p>5 Q. Well, you mentioned EA or Electronic Arts. Are</p> <p>6 you aware of the fact that their contract only had</p> <p>7 to do with the so-called Mercury game, one of the</p> <p>8 two games?</p> <p>9 A. Yes.</p> <p>10 Q. So it didn't have anything to do with the second</p> <p>11 game, did it?</p> <p>12 A. No, but they committed to distribute the</p> <p>13 second game. It was my understanding, they were</p> <p>14 much more heavily involved in the first. In fact,</p> <p>15 I think they were helping finance it, if I</p> <p>16 recollect, the first game but EA, you know, from</p> <p>17 the board's perspective, seemed to be, you know,</p> <p>18 pretty supportive and bullish about this company.</p> <p>19 Q. As of June 9, the date of this slide dec., what</p> <p>20 specific information had the board received other</p> <p>21 than what's in this slide dec. concerning EA?</p> <p>22 A. I think as part of the process, you know, it</p> <p>23 might have been at this meeting that, you know,</p> <p>24 the explanation of what entertainment arts was,</p> <p>25 they're the largest distributor in the industry.</p> |

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1 And they were ones to be -- you know, were highly
2 thought of and, you know, so from that standpoint,
3 it was -- there might have been some, I can't
4 remember what Al Verrecchia, some people were more
5 familiar with the company than I was, personally.
6 But generally, entertainment arts was perceived by
7 the board, at least -- let me say by me, I can't
8 speak for all the others, as you know, being the
9 industry guru and key distributor of these things.
10 Q. Well, did EA make a presentation on June 9?
11 A. No, EA didn't.
12 Q. Did EA ever make a presentation?
13 A. I don't recall. I don't recall.
14 Q. Well, again, you say mitigating, the fact that EA
15 was there, how was that mitigating simply by
16 virtue of the fact that they had a commercial
17 relationship with 38 Studios?
18 A. Yeah, they had enough confidence in the
19 company that they were willing to undertake the
20 distribution of the first game, and as I recall, I
21 don't remember the details, Tom, it seems to me
22 they were involved somehow on even the financing
23 of the first game, okay. So, I think, you know,
24 it would give you some comfort that people who
25 understand this industry are major players in the

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1 industry, are willing to take on the distribution
2 of this company's product, that's all.
3 Q. And to what extent was the board relying upon the
4 fact that EA had a contractual relationship with
5 38 Studios in deciding to vote in favor of the
6 deal?
7 A. I don't say it's a major factor. There were
8 a lot of different factors, as were pointed out
9 here. The team, the creative team they put
10 together was from outside, third parties, tell us
11 was a top-flight group. Some of the, quote, you
12 know, the whiz kids, if you will, it seems to me
13 as I recall a little bit older, I wouldn't call
14 them kids, but you know in the industry, and the
15 team they had assemble of building this game were
16 very competent, capable people. So, there were a
17 whole lot of different factors, not any one.
18 Q. Let's go to, "Product not yet branded." What did
19 you understand that to mean under the project
20 risks and rewards section?
21 A. I think it was just that, this was completely
22 new. The MMOG was a completely new product as
23 opposed to the -- what do they call the first one,
24 there's a terminology for it --
25 Q. RPG?

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1 A. Yeah. So, it was -- they were going into --
2 this is why the company was very enthusiastic and
3 in fact when we had outside, as I said, advisors
4 look at this thing, this seemed to be the new area
5 for game development, this massive multi-player
6 games, but it was new.
7 Q. Now, let's go to Page 13, numbered internally on
8 the slide dec. -- actually, let's go back to Page
9 12, the top of Page 12, project risks. It says,
10 "Changing industry dynamics due to technology," do
11 you see that?
12 A. Yes.
13 Q. What did you understand that to be?
14 A. I don't remember in detail, Tom. I think the
15 sense was there were a lot of factors. They used
16 to sell these things outright then they were
17 leasing them, or they were getting fees from the
18 users. There were a lot of things happening in
19 the industry, but I think the general view by the
20 experts and advisors was that 38 Studios
21 understood that and had flexibility capability to
22 adapt to that.
23 Q. So, what steps did you take as chairman of the
24 board to validate the statement that flexibility
25 to adopt new technologies in preproduction phases

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1 of future releases. What steps did you take to
2 validate that statement?
3 MR. LEDSHAM: Objection.
4 A. As I said, this was the first meeting. There
5 were subsequent presentations done by, you know,
6 industry observers that had a better overall view,
7 and as I remember, they also were very positive
8 about the company.
9 Q. Did -- now you say the outside advisors, do you
10 recall that Strategy Analytics had been hired?
11 A. Yeah, that's one of the presentations that
12 was made to the board.
13 Q. Now --
14 A. That's in, what, slide 16, Page 16.
15 Q. That's referenced on Page 16. Let's go back to
16 that. Do you know if Strategy Analytics ever
17 addressed the issue of changing industry dynamics
18 due to technology?
19 A. I don't recall that.
20 MR. WISTOW: Do you want to show him
21 the slide for Strategy Analytics?
22 Q. Let's go further down on the projections here, if
23 we could, please. On Page 13, do you see that it
24 says, "Company most-likely projections," do you
25 see that?

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| <p>1 A. Yes.</p> <p>2 Q. Now, the term projection, I think we've agreed</p> <p>3 earlier today that's simply someone's best guess</p> <p>4 of what might happen in the future, right?</p> <p>5 MR. LEDSHAM: Objection.</p> <p>6 A. Yes.</p> <p>7 Q. There were no guarantees that in fact that 38</p> <p>8 Studios would achieve any of those projections</p> <p>9 that are set forth on Page 13 in that chart, are</p> <p>10 there?</p> <p>11 A. No. No guarantees in any projection.</p> <p>12 Q. And these projections themselves are based upon</p> <p>13 assumptions that are below there under the heading</p> <p>14 "Assumptions," right.</p> <p>15 MR. LEDSHAM: Objection.</p> <p>16 A. Yes.</p> <p>17 Q. Can we agree then that if some of the assumptions</p> <p>18 prove to be incorrect, that would affect the</p> <p>19 amount of the projections, right?</p> <p>20 A. Yes.</p> <p>21 Q. If in fact, let's say, for example, the company</p> <p>22 were to sell, let's say, 300,000 subscriptions as</p> <p>23 opposed to the 600,000 subscriptions as referenced</p> <p>24 in the second bullet point, that would affect the</p> <p>25 projection calculations, would it not?</p> | <p>1 is that, you know, the game wasn't produced. They</p> <p>2 understood that that was the risk, okay. I think</p> <p>3 there were lots of other -- by the way, I don't</p> <p>4 know -- I seem to recall a presentation made by</p> <p>5 Wells Fargo, your client, that reviewed the</p> <p>6 projections and cash flow, et cetera, and then</p> <p>7 deemed them to be reasonable.</p> <p>8 Q. We're going to get to that --</p> <p>9 A. Okay.</p> <p>10 Q. -- we're going to get to that, Governor?</p> <p>11 A. Okay. There were a lot of people that</p> <p>12 reviewed this. This isn't something they pulled</p> <p>13 out of the air that said, yeah, there's no</p> <p>14 guarantees in any of these. The board said that</p> <p>15 many times. Look, you know, the worst thing and</p> <p>16 the biggest risk is that this thing never launches</p> <p>17 because they don't complete the project, you know.</p> <p>18 Q. So there were simply no guarantees offered by</p> <p>19 anybody that they would sell even a single</p> <p>20 subscription, isn't that fair to say?</p> <p>21 A. Say that again.</p> <p>22 Q. There was no guarantee made by anybody?</p> <p>23 A. Of course not, no.</p> <p>24 Q. Of course not. Now, let's -- did Strategy</p> <p>25 Analytics, to the best of your recollection,</p> |
| Page 182 | Page 184 |
| <p>1 A. Yes. EA, by the way, thought there was</p> <p>2 potential of several millions of these as a</p> <p>3 distributor understanding the industry.</p> <p>4 Q. Well, let's go on to the actual Strategy Analytics</p> <p>5 document itself -- I'll come back to that in a</p> <p>6 moment. So, we then go to the -- let's go to Page</p> <p>7 14. Now, 14 is the company worst-case</p> <p>8 projections, right?</p> <p>9 A. That's what it says, yes.</p> <p>10 Q. Now, the only difference in assumptions between</p> <p>11 Page 14 and Page 13 is the change in the</p> <p>12 assumption that the Copernicus subscriptions would</p> <p>13 drop from 600,000 at the outset in 2012 to 300,000</p> <p>14 annually, 2013 and forward, correct?</p> <p>15 A. Correct.</p> <p>16 Q. But in any enterprise, I guess the worst-case is</p> <p>17 that they wouldn't sell any?</p> <p>18 A. Yeah. You don't complete the product; you</p> <p>19 don't sell any.</p> <p>20 Q. And certainly nobody offered the EDC board any</p> <p>21 guarantee that any of these projections would in</p> <p>22 fact --</p> <p>23 A. No.</p> <p>24 Q. -- would play out, right?</p> <p>25 A. The board understood that, you know, the risk</p> | <p>1 provide any analysis of these projections?</p> <p>2 A. You know, again, I don't remember. I don't</p> <p>3 recall, Tom. If we want to go back through the</p> <p>4 presentation, you know --</p> <p>5 Q. Wait.</p> <p>6 A. -- I'd have to look at it.</p> <p>7 Q. Do you have any present recollection without</p> <p>8 looking at it --</p> <p>9 A. No. My only general recollection was that</p> <p>10 Strategy Analytics was positive about the industry</p> <p>11 and generally positive about the prospects for 38</p> <p>12 Studios, that's my general recollection of the,</p> <p>13 you know, the feeling I came away from the</p> <p>14 presentations. I mean, if the outside consultant</p> <p>15 had been standing there saying, you know, a lot of</p> <p>16 negatives about either the industry or the</p> <p>17 company, certainly it would have given pause, but</p> <p>18 I don't recall that.</p> <p>19 MR. WISTOW: We have the Strategy</p> <p>20 Analytics dec. if you want to show him the dec.,</p> <p>21 Mr. Holt.</p> <p>22 Q. We are going to be moving on to the actual</p> <p>23 Strategy Analytics report that was provided to the</p> <p>24 board and that's Exhibit 460. We'll have that in</p> <p>25 a moment. Here's Exhibit 460.</p> |

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| <p>1 (DOCUMENT SHOWN) 2 Q. We've been referring to the Strategy Analytics' 3 evaluation. Do you have that in front of you, 4 Exhibit 460? 5 A. Yes. 6 Q. Okay. This is an e-mail again from Sharon Penta, 7 who was an employee at EDC, addressed to you and 8 the other board members at the EDC, right? 9 THE WITNESS: I shouldn't write on 10 this, should I? 11 MR. WISTOW: No. 12 A. This is dated June 11. It's referencing 13 Wednesday's board meeting. This is Friday. So 14 this would have been the 9th board meeting, "As 15 requested at Wednesday's board meeting, attached 16 is economic analysis" -- okay. 17 (WITNESS READING DOCUMENT) 18 Q. And that's the Strategy Analytics study that you 19 were referring to a few questions back, right? 20 A. Yes. 21 Q. Now, let's take a look at this document which 22 begins with Bates stamp BR 36231, and let's go to 23 the actual third internally numbered page. Do you 24 have that? 25 A. Yes.</p> | <p>1 an advisor to EDC to assess risk, right? 2 A. That's my understanding. 3 Q. Now, let's go to -- 4 MR. WISTOW: Excuse me, before you 5 do. 6 (COUNSEL CONFERRING WITH WITNESS) 7 MR. HOLT: Max, I don't think you 8 should be instructing the witness. It's highly 9 improper to have you leaning over in the midst of 10 an examination. 11 MR. WISTOW: There was no question 12 pending. 13 MR. HOLT: It's highly improper. 14 MR. WISTOW: I'm sorry, I've seen you 15 do it. 16 MR. HOLT: You've been coaching the 17 witness -- 18 MR. WISTOW: You've done the same 19 thing. I'm not coaching anybody. I have a right 20 to talk to him. There's no question pending. 21 MR. HOLT: We're trying to get the 22 witness's uninfluenced testimony on the record 23 here, and that does not help. 24 Q. So, let's stay with the Strategy Analytics report 25 that was prepared at the request of the EDC. Go</p> |
| Page 186 | Page 188 |
| <p>1 Q. And it says here that, "The State of Rhode Island 2 via its Economic Development Corporation requested 3 an evaluation of the viability of developing a 4 video game cluster in the state." Do you see 5 that? 6 A. Yes. 7 Q. And one of the items, the last bullet point under 8 the first paragraph is, "The assessment of risk 9 factors associated with an investment in a company 10 with a profile similar to 38 Studios." Do you see 11 that? 12 A. Yes. 13 Q. Now, why did the EDC board ask for -- ask Strategy 14 Analytics to perform a risk analysis? 15 A. Well, as I said earlier, the board -- we had, 16 you know, at EDC staff, et cetera, and financial 17 staff, et cetera, that are used to doing different 18 things. This was an entirely new industry, and we 19 had gotten information, obviously, from the 20 company and from other sources, as you point out, 21 the private placement memorandum or whatever, but 22 I think the board felt we'd like a third party to 23 come in and give us, you know, their view, based 24 on their expertise of the industry. 25 Q. And Strategy Analytics was specifically hired as</p> | <p>1 to pages -- internal Page 13. Do you see that, 2 Exploring Some Risk Factors? 3 A. Yes. 4 Q. Now, let's go down to the middle of the page. Do 5 you see some language that is in bold type face 6 with an underline? 7 A. Yes. 8 Q. And can you read that for us allowed please? 9 A. It's entitled, other risk factors, and it 10 says, "Few offerings have achieved greater than 11 300,000 subscribers." 12 Q. And that's the highlighted bold on that page? 13 A. Yes. 14 Q. And what do you understand that to mean? 15 A. Just what it says. 16 Q. So in other words, what Strategy Analytics -- 17 A. It says few have exceeded 300,000. It 18 doesn't say none have, but it says few have. 19 Q. Okay. Well, it's under the overall section of 20 Exploring Some Risk Factors, right? 21 A. Yes. 22 Q. So -- 23 A. That follows a whole section that talks about 24 the positives and all the things that the company, 25 they felt were, you know, had done a good job at.</p> |

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| <p>1 Q. But the point of the exercise here is that it does 2 have in bold the statement that few offerings have 3 achieved greater than 300,000 subscribers, right? 4 A. Yes. 5 Q. And so that's telling the board that few companies 6 have had an -- have ever exceeded the 300,000 7 subscriber benchmark, right? 8 A. Yes. 9 Q. It then goes on to say -- 10 A. Remember, EA is, you know, is -- it's 11 represented that entertainment arts, which is the 12 distributor, thought the potential for this was 4 13 to 5 million units. So you have -- what you have 14 here is one opinion that 300,000, you know, few 15 get higher than that, and then you've got an 16 industry leader in terms of a distributor, whose 17 opinion was that this had the potential to sell 18 many more. So you had conflicting views in terms 19 of what the potential might be. 20 Q. But had the EDC hired EA as a consultant in this 21 matter? 22 A. No. I'm just saying that there were other 23 viewpoints about it, that's all. 24 Q. But the viewpoint being expressed by the actual -- 25 the advisor that was retained by EDC, that is to</p> | <p>1 respectable figures; do you see that? 2 A. Yes. 3 Q. Now, let's go back to the assumptions that we have 4 in the slide dec. D-123, please. 5 A. Could I just clarify something here because 6 I'm just reading this. You know, it's been four 7 years, and I don't remember all the details. They 8 highlight that 300,000, few exceed that. But if I 9 understand, then they highlighted one, two, three, 10 four, five, you know, that had -- six, seven 11 eight, that most of whom did substantially more 12 than that. Am I misreading this? 13 Q. Well, do you know if in fact, for example, NCsoft 14 had a brand that was well-known in the Korean 15 marketplace for gaming at the time? 16 A. We can debate why and so forth. All I'm 17 trying to do is say -- 18 MR. WISTOW: Let him finish. 19 A. The report pointed out that there were a 20 number of gaming companies that had exceeded, 21 there are reasons why they did, I'm sure, okay, 22 I'm not disputing that, Tom. All I'm saying is 23 they weren't saying nobody is going to do more 24 than 300,000. 25 Q. But it's clear that the experts or the advisor</p> |
| Page 190 | Page 192 |
| <p>1 say, Strategy Analytics, was going through the 2 trouble of not simply boldfacing a portion of this 3 report, but underlying it saying, "Few offerings 4 have achieved greater than 300,000 subscribers." 5 Right? 6 A. Yes. 7 Q. And that would refer to the actual first game that 8 we're talking about, right -- 9 MR. WISTOW: Objection. 10 Q. -- I mean the second game? 11 A. This refers to Copernicus. 12 Q. The second game. Copernicus? 13 A. Yes. 14 Q. So, it goes on to say that there's a short list of 15 companies that includes what is considered the 16 "gold standard," in quotes, do you see gold 17 standard? 18 A. Yes. 19 Q. What do you understand that term to mean as used 20 in that passage? 21 A. One of the better companies. 22 Q. Sorry? 23 A. One of the better companies. That's what I 24 would understand it to mean. 25 Q. And then it goes on to say a number have achieved</p> | <p>1 hired by EDC was pointing out that few had 2 achieved greater than 300,000 subscribers, right? 3 A. Yes. 4 Q. Let's go back to Exhibit D-123. 5 A. Okay. 6 Q. Let's go to Page 13. Do you have Page 13 in front 7 of you? 8 A. Yeah. I have 14, I'm sorry. 9 Q. Take a look at Page 13. 10 A. Yes. Most-likely projections and then -- 11 Q. What did you understand the phrase, "Company," 12 quote, "most-likely projections," to mean? 13 A. What they thought they were most-likely 14 capable of doing. When you do, you do a high, a 15 low and most-likely. That's fairly common and 16 standard. So this was their view. You're right, 17 the company's view of a most-likely projection. 18 Q. And was part of Strategy Analytics' job to 19 verify -- 20 A. I don't know. 21 Q. Let me finish my question, please. -- To verify 22 projections that were made by the company? 23 A. I don't remember. 24 Q. Was it part of your their job to verify 25 assumptions underlying projections presented to</p> |

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| <p>1 the board?</p> <p>2 A. As I said, I don't recall what the scope of</p> <p>3 their engagement was.</p> <p>4 Q. Now, the company most-likely projections --</p> <p>5 A. I do recall Wells Fargo --</p> <p>6 Q. What specifically do you recall about Wells Fargo?</p> <p>7 A. They reviewed the cash flow projections of</p> <p>8 the company, that's what I recall, you know, in</p> <p>9 one of these presentations and concluded that they</p> <p>10 seemed reasonable.</p> <p>11 Q. When you say cash flow projections --</p> <p>12 A. Well, same thing, sales of the product, cost,</p> <p>13 et cetera, and I don't know what, what cash flow</p> <p>14 they were reviewing, but I'm assuming it was the</p> <p>15 company's.</p> <p>16 Q. Now, when you're referring to cash flow, are you</p> <p>17 talking about projected cash flows, right?</p> <p>18 A. Yes.</p> <p>19 Q. Only projections, because they hadn't been making</p> <p>20 any money?</p> <p>21 A. No, I understand that. All of these things</p> <p>22 are projections.</p> <p>23 Q. So, when you say cash flows, let's be clear, there</p> <p>24 was no cash flowing from revenue -- from sales at</p> <p>25 that point in June 9, 2010, was there?</p> | <p>1 at the same one.</p> <p>2 Q. We're looking at Page 13 --</p> <p>3 A. Page 13.</p> <p>4 Q. -- of D-123?</p> <p>5 A. Right.</p> <p>6 Q. It talks about projections, right?</p> <p>7 A. Right. To me, cash flow, it doesn't say</p> <p>8 this, but to me cash flow is, where you see</p> <p>9 EBITDA, it's the cash flowing from the revenues</p> <p>10 above, and then the projected expenses each year,</p> <p>11 and below that what the debt service was going to</p> <p>12 be. And all I'm saying, Tom, is those</p> <p>13 projections, to the best of my knowledge, were</p> <p>14 reviewed, I think by Wells Fargo, and if not,</p> <p>15 somebody reviewed them, concluded that, you know,</p> <p>16 their assumptions were, you know, reasonable.</p> <p>17 They didn't have to gain a huge share of the</p> <p>18 market, as I recall. This looked okay.</p> <p>19 Q. Now let's go back -- but nevertheless, they're</p> <p>20 simply projections, right?</p> <p>21 A. Of course. All these things are projections.</p> <p>22 Q. Let's take assumptions underlying the most-likely</p> <p>23 projection. It says 600,000 subscribers?</p> <p>24 A. Yes.</p> <p>25 Q. And if we go to the actual Strategy Analytics'</p> |
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| <p>1 A. No. We said that. This is prerevenue --</p> <p>2 MR. WISTOW: Let him finish.</p> <p>3 A. -- what I'm saying to you is the company had</p> <p>4 a projection of when they would complete the first</p> <p>5 game, the sales that would result from that game,</p> <p>6 their cost and then when the Copernicus would be</p> <p>7 completed, and the projection of the revenues that</p> <p>8 would come from Copernicus. All of that was in</p> <p>9 to, you know, a cash flow projection.</p> <p>10 Q. Well, maybe we're -- this is just semantics.</p> <p>11 We're talking about revenue projections is that</p> <p>12 what you're referring to when you say cash flow</p> <p>13 projections, or do you have something else in</p> <p>14 mind?</p> <p>15 A. No. No. Your first item is taking in cash</p> <p>16 from sales, yes. But the other side is what are</p> <p>17 you spending. Okay. So, when you do a cash flow</p> <p>18 projection, it's both sides. It's what are your</p> <p>19 expected sales, and they had those assumptions</p> <p>20 built in, and then this what are your projected</p> <p>21 costs to do that.</p> <p>22 Q. But are there any cash flow projections on Page 13</p> <p>23 of the slide dec., Exhibit D-123?</p> <p>24 A. No -- well, wait a minute. Well, let me --</p> <p>25 EBITDA, net profit and so forth, if we're looking</p> | <p>1 risk analysis, it states that, "Few offerings have</p> <p>2 achieved greater than 300,000 subscribers."</p> <p>3 A. Yeah, which is why they put that as, you</p> <p>4 know, the next slide or whatever. It's reducing</p> <p>5 that -- the worst-case, the company's worst-case</p> <p>6 was 300,000.</p> <p>7 Q. Well, let's go to -- but certainly the company's</p> <p>8 most-likely projections that were being presented</p> <p>9 to the board?</p> <p>10 A. They expected that they had a real winner in</p> <p>11 terms of a game and what they were doing in</p> <p>12 developing with a lot of industry expertise in</p> <p>13 this multi-player game was going to be very well</p> <p>14 received. They, you know, were supported in that,</p> <p>15 to my knowledge, by entertainment arts who</p> <p>16 understood the industry as well.</p> <p>17 Q. But entertainment arts wasn't your advisor at EDC?</p> <p>18 A. No, I didn't say that.</p> <p>19 Q. So we have here on the best-case or most-likely</p> <p>20 projections something that is twice what is</p> <p>21 referred to as a number of 300,000 subscribers</p> <p>22 that few offerings have achieved, according to</p> <p>23 Strategy Analytics, right?</p> <p>24 A. Yes.</p> <p>25 Q. If we go on to the worst-case scenario, that says</p> |

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|--|--|
| <p>1 worst-case, that they would drop to 300,000 2 annually 2013 and forward, right? 3 A. Yes. 4 Q. But the Strategy Analytics passage that we just 5 read where it said few offerings have achieved 6 greater than 300,000 subscribers, that actually 7 seems to be, or at least implies a best-case of 8 300,000, does it not? 9 A. No, I wouldn't take it that way at all. 10 MR. WISTOW: Objection. Let's take a 11 five-minute break. 12 MR. DeSISTO: We can go off the 13 record. 14 (RECESS) 15 THE VIDEOGRAPHER: Back on the 16 record. 17 Q. Governor, we were talking before about a credit 18 memo. Was a credit memo ever prepared by anybody 19 concerning the projected revenues of 38 Studios to 20 your knowledge; what would you consider a credit 21 memo in terms of your commercial banking industry? 22 A. Not to my knowledge. There could have been 23 on the staff, but nothing that I saw. 24 Q. And do you have any recollection of a credit 25 memorandum analysis that would have been presented</p> | <p>1 wrong in that, Tom, but I would -- this is not 2 what the presentation was to the board. This was 3 backup materials sent out. Am I right? 4 Q. Now I'd like the record to reflect that the 5 witness has been gesturing with Exhibit 460 which 6 is the Strategy Analytics report and you have that 7 in front of you? 8 A. Yes. 9 Q. Did you take the time to read that report? 10 A. I don't recall reading the whole report. 11 Often they have executive summaries is what I 12 would read, then I would skim, possibly, through, 13 but what I'm saying to you is this is not my 14 recollection of what was presented to the board 15 meeting. That there was a slide dec. like all -- 16 PowerPoint or something that, you know -- the sum 17 and substance was, on balance, positive that's my 18 recollection, Tom. 19 Q. You're saying your recollection on balance was 20 positive? 21 A. Yeah. 22 Q. Of the Strategy Analytics report was positive? 23 A. Yes. 24 Q. Now, but you don't know if you actually read the 25 entire report or not, do you?</p> |
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| <p>1 to the board that would have been testing any of 2 the assumptions? 3 A. No, other than these, you know. As I said, 4 Wells Fargo I think did an analysis of this and 5 then -- by the way, I don't believe -- well, not 6 that I don't believe, I remember this being 7 distributed, but to be frank with you, I wouldn't 8 have read all of this because it was a 9 presentation made to the EDC board that was -- is 10 that correct? I didn't seem to recall a dec. of 11 slides referring to Strategic -- what are they 12 called -- Strategy Analytics. 13 Q. Okay. You have been gesturing toward the Strategy 14 Analytics report that was commissioned by EDC to 15 examine risks, you were saying -- 16 A. Yes. 17 Q. -- you would not have read it, you don't think? 18 A. There's executive summary. This was 19 apparently sent out ahead of time. As I said, 20 often you don't read all these in details, but my 21 recollection is, correct me if I'm wrong, that 22 there was a slide presentation made to the board 23 that would have been presumably a summary of this, 24 and my recollection, generally, was that it was 25 that it was positive in summary. But I could be</p> | <p>1 A. I'm asking a question. I said I didn't read 2 this. I'm sure I didn't read this in detail. I 3 would have read the summary. But what I'm saying 4 to you is I believe, and you must have this 5 document, but I believe there was a slide 6 presentation made to the board, PowerPoint. You 7 don't go into a board meeting with a report like 8 this and sit there and say, Ladies and gentlemen, 9 we go through it page-by-page. There was a 10 PowerPoint, you know, I thought, and you know, my 11 general reaction -- 12 Q. Is that your recollection, it was a PowerPoint? 13 A. Yeah. 14 MR. WISTOW: Do you want to show it 15 to him? 16 Q. Now, do you have any recollection of any board 17 member asking Strategy Analytics any questions 18 whatsoever concerning their report? 19 A. No, I don't remember that. 20 Q. Now let's go to -- let's go to Exhibit 460, again, 21 the Strategy Analytics report and let's take a 22 look at the executive summary. We agree, at least 23 on the face of this, this was distributed to all 24 of the board members, right? We don't disagree on 25 that, do we, Governor?</p> |

1 A. No. It would indicate that it's been
2 distributed to the board members.
3 Q. And even if you hadn't taken the time to read the
4 entire report, you think you would have gone to
5 the trouble to actually have read the executive
6 summary?
7 A. Yes.
8 Q. Let's go down to the section that says, "Our key
9 findings regarding the game business include." Do
10 you see that?
11 A. Yes.
12 Q. And let's go to the third bullet point down, that
13 says, the MMO specifically has had some break-out
14 success, Blizzard's, World of Warcraft, 11.5
15 million. MCSoft's Lineage, it goes on to say,
16 "However, cracking the 300,000 subscription level
17 is a rare accomplishment." So in the opinion of
18 the expert hired by EDC they are saying that in
19 their opinion or their experience cracking that
20 300,000 subscription level was a rare
21 accomplishment, not something routinely achieved
22 in this industry, correct; that's what it says?
23 A. Yes. But it says there have been some
24 break-out successes.
25 Q. Yes, but then it qualifies with the however,

1 subscriber level in their opinion was a rare
2 accomplishment, right? That's what they're
3 telling the board in this executive summary,
4 right?
5 A. Yes.
6 Q. Now --
7 MR. WISTOW: Do you want to show him
8 the slides that he's referring to?
9 THE WITNESS: I haven't answered the
10 question because some of this, you know, is, you
11 know, the tone of this is a little different than
12 I remember from the presentation.
13 MR. WISTOW: I guess they don't want
14 to show you the slides.
15 Q. Again, going back to this concept of a credit
16 memo. If you had seen a credit memo prepared by
17 an EDC staffer who was charged with the
18 underwriting of the 38 Studios loan expressing a
19 negative opinion on the 38 Studios transaction,
20 would that have affected your view as to whether
21 to support it or be against it?
22 MR. DeSISTO: Objection. Go ahead.
23 A. It would have precipitated questions about
24 it, certainly. Doesn't mean -- doesn't mean you
25 wouldn't support the deal. You go forward with a

1 "However, cracking the 300 subscriptions level are
2 an accomplishment" Right?
3 A. I understand that. I agree with that. Two
4 sides of there.
5 Q. What did you understand, Strategy Analytics, to
6 mean when they said, "However, cracking the
7 300,000 subscriber levels are accomplished." What
8 did you understand the expert to be saying then?
9 A. I think it was very clear what they were
10 saying, 300,000 on average, or whatever, would be
11 what would you would expect --
12 Q. Wait a minute. Is that what that's saying --
13 MR. WISTOW: Whoa, whoa, whoa.
14 A. I said earlier there were other opinions that
15 were much greater and Strategy Analytics
16 themselves said they were a number that were
17 break-out successes. So -- by the way, the
18 company felt, their concept behind Copernicus, you
19 know, was I'm just telling you what they felt, you
20 know, was significant and unique enough that it
21 had the potential to be a big success.
22 Q. Well, can we agree that here, that Strategy
23 Analytics, the expert that was hired by EDC, to
24 assess the risks in the 38 Studios transaction,
25 was expressing the view that cracking that 300,000

1 project like this on the basis of lots of
2 different factors and evaluations. As I said many
3 times, in reviewing this and going through the
4 board process, we understood there were risks and
5 we understood the risk was that the game might not
6 be produced. On the other hand, there were a
7 whole lot of mitigating factors in terms of, you
8 know, positives for what we thought could be
9 accomplished here. And balance, you had 12, you
10 know, well-qualified people, leaders in our
11 community in their own respective businesses come
12 to the conclusion that this was a risk worth
13 taking.
14 These aren't people that willy-nilly are
15 going to say, oh, yeah, \$75 million of state
16 money, who cares. No. These are thoughtful
17 people who spend a lot of time and understand
18 risk, because that's what they deal with every
19 day, but they also understand that risks are
20 mitigated with other factors. And that on balance
21 you make the best decision you can for what you
22 think is, you know, the best thing for the state.
23 That's the basis on which this decision was made.
24 Q. So as you sit here today, can you think of a
25 single piece of information that would be directly

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| <p>1 relevant to the financial condition of 38 Studios 2 which was not shared with the EDC board prior to 3 July 26, 2010? 4 MR. LEDSHAM: Objection. 5 A. Not shared? I have -- 6 MR. WISTOW: That you know of today 7 he's talking about. 8 A. No. 9 Q. Now, you earlier referred to a number of outside 10 parties who were providing information that 11 somehow, in your view, stood for the proposition 12 that the revenue projections on the slide dec. at 13 the June 9 board meeting were reasonable. Who 14 specifically provided information related to the 15 reasonableness of revenue projections prepared by 16 38 Studios? 17 MR. WISTOW: Who provided it to the 18 board? 19 MR. HOLT: Who provided it to the 20 board. 21 A. You know, I don't recall, but I believe your 22 client was one of them that had reviewed these 23 projections and, you know, concluded that they 24 were reasonable. I don't remember all of the 25 presentations that were made but I --</p> | <p>1 want some specifics about Wells Fargo, why don't 2 you let him see the Wells Fargo slide dec. that's 3 attached to the minutes. 4 MR. HOLT: We'll get to that. I'm 5 asking questions. 6 MR. WISTOW: This is four years ago. 7 We have the exhibit. 8 MR. HOLT: I understand that. We get 9 it was four years ago. We get that. 10 Q. Take a look at Exhibit 353, please. Now Governor, 11 just to give you, give you again some context 12 here, I think the parties agree here there was a 13 special meeting of the EDC board on July 15, 2010. 14 Does that accord with your recollection at this 15 point? 16 A. I'm sorry. I was reading. 17 Q. The parties have agreed there was a special EDC 18 board meeting on July 15, 2010 -- 19 A. Okay. 20 Q. -- to discuss the actual 38 Studios \$75 million 21 loan? 22 A. Okay. I know there were, I think two special 23 meetings dedicated solely, no other discussion, 24 just the 38 Studios, so -- 25 Q. And there was one on July 15?</p> |
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| <p>1 Q. Who else? 2 A. I don't -- I just don't remember, Tom. 3 Q. Do you have any specific memory as you sit here 4 today of the Wells Fargo presentation at the June 5 12 board meeting -- 6 MR. WISTOW: June 14. 7 Q. -- June 14th board meeting? 8 A. Not in detail. Again, my sense was, as I 9 think back, it's four years ago, and that in the 10 course of the board's due diligence process and 11 reviewing both the industry and 38 Studios 12 specifically, I don't recall in any of those 13 presentations any huge negative coming back. 14 Risks, yes, that you've articulated, and I've said 15 before, but there were many, many other factors 16 mitigating those risks, recognizing that they were 17 producing a game, well along on the first one, had 18 started and spent money on the second one. So it 19 wasn't like we were starting the second one from 20 scratch, either. And that, you know, all the 21 things that we thought, that this could be a 22 cluster of really highly educated, highly paid, 23 you know, people in our state, and be an excellent 24 economic development, you know, strategy. 25 MR. WISTOW: Can I ask you, if you</p> | <p>1 MR. WISTOW: We've agreed on July 15. 2 You can accept that. 3 Q. We've agreed. Now, Exhibit 353 is an e-mail from 4 Rosemary Booth Gallogly to your chief of staff, 5 Andrew Hodgkin and Jamia McDonald, with a carbon 6 copy to Chris DiFilippo who is one of your admin. 7 assistants. And who is Donna D'Aquila, another 8 admin. assistant? 9 A. Yeah. I think she might have been 10 administrative assistant for Andy. 11 Q. Can you just read aloud what Ms. Gallogly's e-mail 12 says? 13 A. It says, "If this could go to the" -- I think 14 it's "go." 15 MR. WISTOW: Or get. 16 A. "Get." 17 MR. WISTOW: Or go, one or the other. 18 A. "Go to the governor before the EDC meeting, 19 that would be great." 20 Q. And I think you've testified earlier that you -- 21 this memorandum was provided to you? 22 A. I don't know if it was -- I don't know if it 23 was provided to me before the meeting. I can't 24 recall that, Tom. I remember seeing the memo, but 25 whether it was provided before the meeting,</p> |

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| <p>1 because this was the -- she wrote it on the 14th. 2 The meeting is the next day. So I just don't 3 recall that. 4 Q. Do you recall having a conversation with Ms. 5 Gallogly in which she suggested that she would 6 like you to bring her memorandum to the board's 7 attention? 8 A. No. 9 Q. She's testified that in fact it was her 10 expectation and she desired that you would 11 actually have brought this to the board? 12 A. She never said that to me, to my 13 recollection. 14 Q. Now let's go through this memorandum, it's 15 addressed -- 16 A. Could I just add to that? Let me reiterate. 17 I have great respect and admiration for Rosemary 18 Gallogly, I've said that many times. But Rosemary 19 Gallogly has no direct responsibility for or no 20 direct involvement with EDC. She has no role 21 there. She's not -- and so you know, I asked her 22 for an opinion as just, you know, a third party, 23 someone who is pretty knowledgeable. But she did 24 not have the benefit of any of the presentations, 25 any of the information that went to the full</p> | <p>1 you? 2 A. Did I not make myself clear? I'm not saying 3 she did not have reports. What I'm saying is, 4 first of all, I recall a difference between, you 5 know, the report that was submitted here and 6 the -- 7 Q. And the Strategy Analytics? 8 (PARTIES SPEAKING AT THE SAME TIME) 9 A. -- and the dec., you know, that was presented 10 to the board. (inaudible). I'd like to come back 11 to that, that's my recollection that they were 12 generally at the end of the -- at the end of the 13 whole summary, favorable. What I'm saying is 14 Rosemary, you know, did not have the benefit of a 15 lot of discussion and input and questions people 16 asked with answers, okay. She's got paper, but 17 that's different than sitting through the whole 18 due diligence. 19 Q. But you told me not too long ago you do not have 20 any specific memory of any board members 21 questioning Strategy Analytics at that meeting? 22 MR. LEDSHAM: Objection. 23 A. I said I don't -- I don't remember what the 24 conversations were. I'm sure there were 25 questions, but I don't remember them.</p> |
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| <p>1 board. Because many of the questions she raised, 2 you know, were in fact discussed by the board. 3 Q. Let's go back to Exhibit D-6. This is an e-mail 4 from Mr. Saul to Ms. Gallogly dated July 12, 2010 5 and it contains a great deal of information, does 6 it not? 7 A. But, Tom -- 8 Q. Yes or no? 9 MR. WISTOW: He's entitled to answer 10 the question. 11 A. Can I answer the question? What I'm trying 12 to say -- 13 MR. HOLT: Answer my question. 14 A. -- it's different, okay, to get a pile like 15 this than it is to sit in on the presentations 16 being made by the professionals and the advisors 17 and so forth and listen to the discussion, listen 18 to all the mitigating factors, listen to the 19 estimates of the risk and so forth. She didn't 20 have the benefit of that. Many of the questions 21 she raised were discussed. That's all I'm saying. 22 Q. Well, she had, according to this July 12, 2010 23 e-mail, she was provided on July 12, 2010 with a 24 copy of Strategy Analytics' final report, so she 25 would have had that before writing that memo to</p> | <p>1 Q. Well, we've agreed that Ms. Gallogly was negative 2 on proceeding with the 38 Studios loan, was she 3 not? 4 A. Well, she had a bunch of concerns that she 5 itemized here in the memo, and some of them had to 6 do with policy. Do we want to take as big a chunk 7 of this and devote it to one transaction? There 8 were a range of issues that she raised. Some of 9 them, for example, the issue of appropriation for 10 moral obligation bond and what that meant and how 11 that would be treated and how this bond might be 12 treated. So there's a lot of different issues she 13 raised that did not necessarily go to the 14 substance of whether this deal should go forward 15 or not. And she may have concluded, by the way, 16 that she wouldn't do it. I respect that. Karl 17 Wadensten concluded that he wouldn't support it. 18 But you know, 12 other people that sat through all 19 these presentations and all this analysis, you 20 know, concluded that it was a risk worth taking. 21 Q. Well, can we agree that as among all of the board 22 members and as between those board members and 23 Rosemary Gallogly, she would have clearly had much 24 more experience and expertise related to 25 financing --</p> |

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| <p>1 A. You're off in a whole other -- 2 Q. I'm asking a question -- 3 A. She may know financing, okay, but that's 4 different than a decision to do a transaction 5 that's an economic development transaction in a 6 cluster in an area that we had identified that the 7 board, 12 of them, felt that understanding the 8 risks, that those risks were mitigated, and this 9 would be a transaction that would be positive 10 to -- you think 12 people would make a decision 11 and say, oh, let's do this, it's a dumb deal, but 12 let's do it. I mean, they made a decision based 13 on a lot of information, and that's all I'm 14 saying. I don't stack her finance abilities up 15 to, you know, the board or anybody on the board. 16 By the way, there were probably people on that 17 board that probably know more about finance 18 generally, so... 19 Q. You told me in your administration, Carcieri 20 Administration, she clearly by far and away had 21 the most experience -- let me finish -- in public 22 finance; do you remember telling me that this 23 afternoon? 24 A. Yes. 25 Q. Given how respected she was in the state in the</p> | <p>1 decision as to whether this is a transaction that 2 you can support. That the risks that were 3 understood are mitigated sufficiently enough that 4 this would be a transaction that would be positive 5 for the state with a high prospect of succeeding, 6 that's why people approved it. 7 Q. So, regardless of that, we can agree that you 8 never caused Ms. Gallogly's July 14, 2010 9 memorandum expressing her concerns to be 10 distributed to EDC board, right? 11 MR. WISTOW: How many times do you 12 have to do that? 13 A. Haven't I answered that already? I think I 14 have answered it. 15 MR. WISTOW: How many times do you 16 have to -- 17 A. I said I'm not even sure I got it before the 18 meeting, Number 1. I do not recall Rosemary 19 telling me she would like it distributed to the 20 board; I don't. Okay. Thirdly, that most of the 21 issues she surfaced are either policy issues, 22 okay, protocol, do we want to put that much into 23 one deal, et cetera. And I understand that. But 24 other issues were discussed as part of the board's 25 due diligence process that's all.</p> |
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| <p>1 areas of -- let me finish -- in the area of public 2 finance, bond financing, don't you think that it 3 would have been important for the board to have 4 heard her opinions on this? 5 MR. WISTOW: Asked and answered. 6 This is becoming just badgering and harassment. 7 A. This is not an issue of public finance. This 8 was a business decision, Tom, okay. It was a 9 business decision with risks and rewards, that 10 were fully vetted by 12 of the business leaders in 11 this state, and I supported it. Okay. This was a 12 transaction that would be positive to the state. 13 Had nothing to do with how it was going to be 14 financed. The financing is -- you know, she has 15 expertise in financing, she's not a business 16 expert. So that's all I'm trying to draw the 17 distinction here. 18 Q. Is it your testimony that the 38 Studios loan had 19 nothing to do with public finance? It was 20 funded -- 21 A. Don't put words in my mouth. 22 Q. Let me finish -- 23 A. Don't put words in my mouth. I think I made 24 myself clear. I said the financing of the 25 transaction is entirely separate from the business</p> | <p>1 Q. Fair enough. Let me expand the question. Isn't 2 it a fact that you never caused Ms. Gallogly's 3 July 14, 2010 memorandum ever to be distributed to 4 the board prior to July 26? 5 A. Rose's memo to me was not distributed to the 6 board, to the best of my knowledge. 7 MR. DeSISTO: I think this is 8 probably a good place to end. We're going past 9 4:30. 10 (OFF THE Record) 11 THE VIDEOGRAPHER: We're off. 12 (DEPOSITION ADJOURNED AT 4:32 P.M.) 13 14 15 16 17 18 19 20 21 22 23 24 25</p> |

C-E-R-T-I-F-I-C-A-T-E

I, LINDA L. GUGLIELMO, do hereby certify that I am expressly approved as a person qualified and authorized to take depositions pursuant to Rules of Civil Procedure of the Superior Court of Rhode Island, especially, but without restriction thereto, under Rule 28 of said Rules; that the witness was first sworn by me; that the transcript contains a true record of the proceedings.

Reading and signing of the transcript was not requested by counsel for the deponent upon completion of the deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of August 2014.



LINDA L. GUGLIELMO, NOTARY PUBLIC/RPR-RMR
(MY COMMISSION EXPIRES AUGUST 13, 2017)

IN RE: RIEDC VS. WELLS FARGO, ET AL.
DATE: JULY 31, 2014
WITNESS NAME: DONALD CARCIERI, VOL. I

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